

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEW MEXICO

3

4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 vs. 1:13-cr-00064-MCA

7 THOMAS JONES and TERRENCE CONNORS,

8 Defendants.

9

10 Transcript of Evidentiary Hearing before The Honorable
11 Carmen E. Garza, United States Magistrate Judge, held in
12 Albuquerque, Bernalillo County, New Mexico, commencing on
13 Friday, August 30, 2013, at 9:30 a.m., and concluding at 1:20
14 p.m.

13

14 For the Plaintiff: Norman Cairns, Esq.

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16 For the Defendant
17 Thomas Jones: John F. Samore, Esq.

18

19 For the Defendant
20 Terrence Connors: Marc H. Robert, Esq.

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22

23 John De La Rosa, CCR
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1 (In open court.)

2 THE COURT: Good morning. Please be seated.

3 All right. Let me call the case of United States of
4 America versus Thomas Jones and Terrence Connors.

5 Counsel, please state your appearances for the record.

6 MR. CAIRNS: Norman Cairns on behalf of the United
7 States, good morning, Your Honor.

8 MR. ROBERT: Marc Robert on behalf of Mr. Jones who is
9 present.

10 MR. SAMORE: John Samore on behalf of Terrence Connors,
11 Judge. He appears to the court's left of counsel and he is in
12 custody.

13 THE COURT: Thank you. Good morning. Counsel, thank
14 you for your ability to schedule this so quickly. We
15 appreciate it.

16 All right. Now, is the government wanting to make an
17 opening statement, opening remarks?

18 MR. CAIRNS: I don't think given the briefing in the
19 case at this time that's necessary, Your Honor.

20 THE COURT: All right. And let me just ask the defense
21 counsel, do you want to make any opening remarks?

22 MR. ROBERT: Not for Mr. Jones, Your Honor.

23 MR. SAMORE: Judge, I feel the motions and responses
24 have adequately covered the issues. We would also waive.

25 THE COURT: All right. I have read them carefully.

1 Let's see. Mr. Robert, you didn't withdraw your
2 motion. Are we going to address that at the end of this, your
3 motion to dispose --

4 MR. ROBERT: Your Honor, as the week developed, the
5 request for information was for the identity of the
6 confidential informant as well as a variety of information
7 about him. Because we felt that some of that information might
8 be relevant to things that may arise in today's hearing, as I
9 communicated to the court through your clerk, I believe, we
10 thought that that was still something that we needed to talk
11 about. So I think the subject is going to come up in the
12 examination, and to the extent that -- well, we'll have to wait
13 and see what develops through testimony as to whether or not we
14 need to address it with the court.

15 THE COURT: Thank you. All right. Is the government
16 prepared to call their first witness?

17 MR. CAIRNS: Yes, Your Honor, the government calls Task
18 Force Officer Devin Verhulst.

19 MR. CAIRNS: Your Honor, I don't have any witnesses in
20 the courtroom except for the case agent.

21 THE COURT: Sitting at your table.
22 Counsel, are you invoking the rule?

23 MR. ROBERT: Yes, Your Honor, thank you.

24 THE COURT: Thank you, Mr. Robert.

25 Please come forward. Please raise your right hand.

1 **DEVIN VERHULST,**

2 after having been duly sworn, testified as follows:

3 **DIRECT EXAMINATION**

4 **BY MR. CAIRNS:**

5 Q. After you get seated there, please state your name for the
6 record.

7 A. Devin Verhulst.

8 Q. Where do you work, sir?

9 A. I'm currently working with the San Juan County Sheriff's
10 Department.

11 Q. Do you also have duties, do you function also as a task
12 force officer?

13 A. Yes, I'm currently assigned to the Region II Task Force.

14 THE COURT: Can you please just spell your name for the
15 record?

16 THE WITNESS: D-E-V-I-N, V-E-R-H-U-L-S-T.

17 THE COURT: Thank you.

18 MR. CAIRNS: Your Honor, I submitted electronically a
19 witness list and exhibit list. I have a copy if you would like
20 that.

21 THE COURT: Okay.

22 Q. (By Mr. Cairns) All right. Can you tell me a little bit
23 about what that task force does, what Region II Task Force
24 does?

25 A. Basically, within San Juan County, we're tasked with trying

1 to identify, disrupt or dismantle drug trafficking
2 organizations that are operating within San Juan County.

3 Q. How long have you worked with that task force?

4 A. Currently been over there about three to four years.

5 Q. Before that, how long have you been in law enforcement?

6 A. Approximately 11 to 12 years.

7 Q. I'm sorry, of that time, how long have you done narcotics
8 work?

9 A. I've been out at Region II Narcotics Task Force for
10 approximately three or four years.

11 Q. Now, can you tell me a little bit about how this
12 investigation, the investigation into Mr. Connors, began?

13 A. It originally began with talking with a confidential
14 informant.

15 Q. Just for the record, do you see Mr. Connors in the
16 courtroom?

17 A. Yes.

18 Q. Can you tell me where?

19 A. Right over there. He's wearing red, got the glasses.

20 Q. Okay. Thank you. All right. So how did you come into
21 contact with this confidential informant?

22 A. We conducted a post-arrest interview out in Kirtland, at
23 the Kirtland substation. Through that conversation, and
24 through his cooperation, he had described that he had a connect
25 that was located in Albuquerque, New Mexico.

1 Q. What was the confidential informant in custody for?

2 A. He was picked up with narcotics as well.

3 Q. And so what did he say to you in the context of, well, I'm
4 under arrest and now I want to do something for you?

5 A. Can you --

6 Q. Let me rephrase that. What information did he provide you
7 about Mr. Connors?

8 A. He provided that basically that he knew a gentleman who
9 went by TC. He had a phone number that he would contact him
10 on. He described his residence in Albuquerque. We were able
11 to pull up like GPS maps and get real close to that area of
12 what he described of where Mr. Connors resided at, and gave a
13 vehicle description as well.

14 Q. All right. What role did Mr. Connors have with this person
15 at least according to him?

16 A. According to him, Mr. Connors was the one that was sourcing
17 him with the methamphetamine.

18 Q. All right. Did he provide you with any other information
19 at that time about Mr. Connors?

20 A. Well, we did a photo lineup once we figured out that we
21 thought we had pinpointed now who Mr. Connors was throughout
22 our investigation. And then he identified Mr. Connors in a
23 photo lineup prior to doing a controlled purchase.

24 Q. All right. Was it at this time, did you obtain any
25 warrants for tracking device or global positioning in the case,

1 or was that later?

2 A. Sir, I believe, the best I can recall, we had that -- I
3 learned about Mr. Connors on like December 11th, and then
4 December 12th, we met back up with the confidential informant
5 to show him the photo lineup. At that point in time, I was in
6 contact with our Intel analyst seeing if there was maybe any
7 money transfers or wire transfers, trying to identify his
8 residence in Albuquerque, and working with HSI agents at that
9 time, and, you know, then the phone number.

10 After doing some checks, we also revealed that the phone
11 number did come back as to a Terrence Connors, so we kind of
12 put TC and then Terrence Connors, that kind of came together,
13 and that's where we were at.

14 Q. Is that how you obtained that photograph that you talked
15 about that you used in the lineup?

16 A. The photograph comes through our Intel analyst, and then
17 they send us a photo lineup of six individuals, and we show
18 that to him after we read them, you know, a photo lineup
19 instructions sheet.

20 Q. All right. Were you involved in any of this surveillance
21 that took place in Albuquerque, or was that strictly with HSI?

22 A. Not so much in Albuquerque, sir. Ours was basically from
23 Farmington to the meet location for controlled purchase in
24 Cuba. Then some of our agents did participate with that
25 operation or following him after the transaction. But my role

1 after that was trying to fill out the paperwork and getting the
2 affidavits for like the GPS and for the tracker and stuff like
3 that.

4 Q. Okay. With regard to this confidential informant, did
5 you -- did you trust this individual?

6 A. Well, trust is a...confidential informants are utilized in
7 different roles within our task force. Some confidential
8 informants are for --

9 MR. ROBERT: Objection, nonresponsive.

10 THE COURT: Overruled.

11 A. Some confidential informants are utilized --

12 Q. (By Mr. Cairns) Wait just a minute. I apologize to you.
13 And I apologize to the court reporter. When there is an
14 objection, make sure you wait until the court rules on the
15 objection, because in this particular case, the objection was
16 overruled, so you can continue to answer the question as you
17 were previously doing so.

18 A. I apologize.

19 Q. But wait for the court to rule on the objection before you
20 respond.

21 A. Yes, sir.

22 Q. I'm sorry, and I apologize to you.

23 Okay, so what were you saying about confidential
24 informants?

25 A. Confidential informants are utilized in different roles

1 within our agency, so some are utilized for information, some
2 are used for controlled purchases, some will remain anonymous,
3 some are paid informants, and some are working for, you know,
4 trying to work off their charges or have a reduction, possibly,
5 in their charges. That type of thing.

6 In this particular case, the confidential informant that we
7 utilized, we were verifying -- as fast as I was obtaining the
8 information, I was trying to verify whether or not this
9 gentleman did in fact exist, and was he in the Albuquerque
10 area, does this person drive this type of vehicle, that type of
11 stuff.

12 Q. And so that's how you identified Mr. Connors?

13 A. Yes.

14 Q. I guess I'll go back, and Mr. Robert's objection probably
15 had some merit. Let me ask you one more time, did you trust
16 this guy, or is that why you did all this extra work to
17 corroborate what he said?

18 A. I have to -- we have to trust them to some extent, you
19 know, because sometimes we're going to be playing the role if
20 they are introducing us to their connect. So there is a degree
21 of trust that does go on. By any stretch of the imagination,
22 you know, but that's all it is, it is a working relationship.

23 We take precautions when we meet with these guys. They are
24 searched down when we meet with them. We always meet with them
25 in pairs. We never meet with them alone. We try to record

1 everything we're doing with them. So...

2 Q. All right.

3 A. You know, it's yes and no.

4 Q. I'll move on. Now, you mentioned before that there are
5 paid informants. Was this informant paid?

6 A. No, sir.

7 Q. And so what was his -- why was he working to help you?
8 What was he hoping to receive in anticipation of that?

9 A. For consideration of his charges, his current charges.

10 Q. That was the charge that he was arrested on?

11 A. Prior, yes, sir.

12 Q. And did in fact he receive any dispensation?

13 A. Not at this time. His case is still moving forward, sir.

14 Q. In other words, the prosecution is moving forward?

15 A. Yes.

16 Q. Did this informant receive any other reward for the
17 information he provided to you?

18 A. No, sir, he did not complete his contract with Region II
19 Narcotics.

20 Q. I'm going to ask you one more favor. It is just to benefit
21 the court reporter. Wait until I finish, because if you talk
22 over me, it's going to be hard for the court reporter to record
23 what we're saying at the same time. I'm sorry.

24 A. No, I'm sorry. I'm nervous.

25 Q. I'm nervous, too. All right. So did you set up a

1 controlled buy through this confidential informant with

2 Mr. Connors?

3 A. Yes, sir.

4 Q. Let me ask you this. Were some of those conversations

5 between the confidential informant and Mr. Connors, were they

6 recorded?

7 A. Yes, sir.

8 MR. CAIRNS: If I might approach, Your Honor.

9 Q. (By Mr. Cairns) I'm handing you what's been marked as

10 Government's Exhibit Number 5. Now, it's a CD.

11 A. Okay.

12 Q. And actually, I don't need to hand it to you. Did you

13 listen to this CD with me at the HSI office yesterday?

14 A. Yes, sir.

15 Q. And can you tell me what's on the CD?

16 A. One of the audio files is a recording of the actual

17 transaction that had taken place, and then there is another

18 audio file with a recorded phone call as well.

19 MR. CAIRNS: I move for the admission of Government's

20 Exhibit Number 5.

21 THE COURT: Any objection, counsel?

22 MR. ROBERT: No objection, Your Honor.

23 MR. SAMORE: Not for purposes of this hearing, Judge.

24 THE COURT: All right. It will be admitted.

25 (Government's Exhibit 5 admitted.)

1 MR. CAIRNS: Your Honor, you're probably aware that in
2 Mimbres Courtroom there is no electronic equipment in here.

3 THE COURT: I see that.

4 MR. CAIRNS: So I brought my own. So with the court's
5 permission, let me go ahead and --

6 THE COURT: Thank you for doing that.

7 MR. CAIRNS: Actually, it is my benefit to do it, Your
8 Honor, because that's how I --

9 THE COURT: Well, thank you for that.

10 MR. CAIRNS: I've tried many cases in this case. Not
11 many, I would say three or four. But Judge Hansen, Judge
12 Parker, sit in here, and I asked Judge Hansen once why he
13 doesn't have electronic equipment in his courtroom, he told me
14 it was age discrimination.

15 Q. (By Mr. Cairns) I'm going to play this through once, then
16 I want you to listen to it again and when we get done, I want
17 you to tell me what's happening in the conversation.

18 A. Yes, sir.

19 (Recording played.)

20 Q. (By Mr. Cairns) Okay. First of all, tell me, how was this
21 recording made?

22 A. Through a digital recorder, like what we call a wire, a
23 little wire.

24 Q. Okay. And can you give me the general time frame as to
25 when this recording was made?

1 A. I would have to refer to my report, but I believe that that
2 was taken on December 13th, if I recall correctly.

3 Q. Were you present when the recording was made?

4 A. Yes.

5 Q. Do you recognize the voices on this recording? Or at least
6 one of them?

7 A. Yes, the confidential informant that was utilized in this
8 case.

9 Q. And is the other -- who does the other participant appear
10 to be?

11 A. I believe he was talking to Mr. Terrence Connors.

12 Q. Why do you believe that?

13 A. Just through our investigation, and that phone number that
14 it came back to, the photo lineup that we did as well. That
15 led me to believe that that was the individual our confidential
16 informant was speaking with.

17 Q. So is the phone number that he's calling here, or the phone
18 number that's calling in, is that Mr. -- the number that you
19 associate with Mr. Connors?

20 A. Well, the original phone number that we had that he was
21 contacting him on was one of them. But then also through the
22 investigation, he advised our confidential informant to contact
23 him on another phone number. So throughout our investigation,
24 there was two separate phone numbers that the confidential
25 informant would make contact with Mr. Connors.

1 Q. Is this one of them?

2 A. One of those, yes, sir.

3 Q. All right. Now, tell me what's happening during the
4 conversation. You don't need to go through the extraneous, the
5 unrelated stuff, but kind of what the gist of the conversation
6 was.

7 A. The gist of the conversation was to have our confidential
8 informant to contact Mr. Connors and let him know that he had a
9 portion of his money for him, and we were trying to ascertain
10 that if Mr. Connors was going to let him know that if he was
11 going to be leaving any time soon to pick up a suspected load
12 of methamphetamine.

13 During the conversation, he advised our confidential
14 informant that he was -- he had placed his order, and also
15 during the conversation, he said that, "Well, I'll try to swing
16 back through your area" once he completed his order, picked up
17 his order.

18 Q. Okay. Is that an order for methamphetamine?

19 A. Yes, sir. I took that to be that he would pick up the
20 methamphetamine, and after he had picked it up, Mr. Connors was
21 going to swing back through the Farmington area to pick up the
22 money we advised our confidential informant that he had to pay
23 that portion off and receive more methamphetamine.

24 Q. Okay. At this point in time, did you have an understanding
25 as to where Mr. Connors was picking up the methamphetamine

1 from?

2 A. We believe it was going to be from the Phoenix area.

3 Q. Where did you --

4 A. Phoenix is a source area.

5 Q. I'm sorry, my fault. Okay. Did you have any other
6 information that would lead you to believe that he was going to
7 Phoenix other than that it is a source city?

8 A. Through the conversations and through the controlled
9 purchase, we had learned that he was -- it was logical that he
10 was going down to that area of Arizona, and so that's what led
11 me to believe that that's where he was heading. Also, the
12 confidential informant advised that he believed that was
13 probably where he was going to be picking up his suspected load
14 as well.

15 Q. Okay. So did you set up this controlled buy of narcotics
16 from Mr. Connors?

17 A. Yes, sir.

18 Q. How did you do that?

19 A. I had met with -- well, my partner and I met with the
20 confidential informant. When we met with him, we searched him
21 and his vehicle, and then we -- he advised us -- is that what
22 you're asking for?

23 Q. Give me a general time frame as to when this occurred.

24 A. It occurred on December 12th. I would have to look at the
25 exact time, but maybe 1900 hours or somewhere in there.

1 Q. How do you know that Connors had narcotics to sell to the
2 confidential informant?

3 A. The confidential informant advised me that he could
4 purchase some methamphetamine and that TC, or his connect,
5 Mr. Connors, wanted to meet in Cuba for the -- to conduct the
6 purchase.

7 Q. Is that information that he relayed to you from phone
8 conversations that he had had with Mr. Connors?

9 A. Yes.

10 Q. And so now give me the protocol for the controlled buy. We
11 know how it came to be, how it's been set up logistically; but
12 tell me what your protocol is when you are initiating a
13 controlled buy through a confidential informant.

14 A. Our protocol is that we'll meet with the confidential
15 informant. There has to be two agents there. We'll search him
16 and his vehicle, and the contents therein, and to make sure
17 that there is no large sums of money, drug paraphernalia,
18 anything like that, any type of illegal contraband, weapons,
19 that type of thing.

20 Then this particular buy, we'll put Region II contingency
21 funds in place. Sometimes we'll go ahead and photocopy the
22 Region II contingency funds as well for evidence if we can
23 recover them later. Then we'll provide continuous surveillance
24 on the confidential informant as they go to the meet location
25 and while the transaction is happening.

1 Q. All right. Do you also sometimes record these
2 transactions?

3 A. Yes, sir.

4 Q. And did in fact you record this one?

5 A. Yes, sir.

6 MR. CAIRNS: Now, this is the second of the two
7 conversations on the tape. This is a much longer tape. For
8 the court's convenience and the convenience of everybody in the
9 courtroom, I'm not going to play all of it.

10 Q. (By Mr. Cairns) Let me ask you, Officer, did you listen to
11 this tape yesterday with me?

12 A. Yes, sir.

13 Q. Can you tell me what takes place in approximately the first
14 15 minutes of the tape?

15 A. The very first 15 minutes? It's basically -- you'll hear
16 music in the background, and basically, it's the confidential
17 informant driving to the designated meet location, which was
18 Cuba, New Mexico.

19 Q. Okay. You say there is music in the background. Where is
20 that music coming from?

21 A. It's coming from his radio, or from inside the vehicle.

22 THE COURT: Let me ask you a question, Counsel. Does
23 defense counsel have a copy of this?

24 MR. CAIRNS: Yes.

25 THE COURT: So they have already heard it. So you

1 don't have any objection to him skipping over part of this?

2 MR. ROBERT: No, Your Honor.

3 MR. SAMORE: No, Your Honor.

4 MR. CAIRNS: This was sent over in discovery earlier in
5 the case, and the other thing is that for the court's benefit,
6 I mean, this exhibit, you'll be provided with the entire
7 exhibit. You're certainly welcome to listen to the entire
8 thing yourself.

9 THE COURT: Thank you. I just wanted to be sure.

10 (Recording played.)

11 Q. (By Mr. Cairns) So this is an example -- is this where
12 he's driving? Can you hear the music?

13 A. (Witness nods.)

14 Q. Does he also get some phone calls while he's --

15 A. Yes, sir.

16 Q. And are those -- what are those phone calls in general?

17 A. Some are just from other people that are contacting him,
18 and sometimes it can be our car contacting him.

19 (Recording played.)

20 Q. (By Mr. Cairns) I'm sorry to stop the tape. I think you
21 hear him, "Do you want anything?" He says, "I'm okay." Is
22 that what he says? Where is this taking place?

23 A. This is taking place in Cuba, New Mexico, at the gas
24 station, like underneath the awning, the overhang, next to the
25 gas pump.

1 Q. I'm sorry. Is there like a convenience store there?

2 A. Yes, a convenience store and McDonald's.

3 (Recording played.)

4 Q. (By Mr. Cairns) Okay. Is the drug transaction concluded
5 at that point in time?

6 A. Yes, sir.

7 Q. Can you tell me -- it's hard to hear, and I apologize to
8 you and to the court. Can you tell me what's happening during
9 this conversation?

10 A. During the conversation, the confidential informant met up
11 with Mr. Connors at that time, at the rear of the vehicle. At
12 that time, the confidential informant handed Mr. Connors a sum
13 of Region II contingency funds. In return, Mr. Connors handed
14 him a package. It was like a rubber keyboard that was rolled
15 up, and then inside of that rubber keyboard was a plastic bag,
16 and inside that was, like, I think it was wrapped up in some
17 tinfoil possibly, the narcotics were inside of that, the
18 suspected drugs were inside of that.

19 Q. Okay. While this transaction is taking place, are there
20 agents conducting surveillance of the transaction?

21 A. Yes, sir. Around the perimeter.

22 Q. What happens afterwards, after the transaction is finished,
23 and then what's the protocol at that point in time?

24 A. Agent Green and I followed the informant away from a
25 transaction to a safe location while the other agents who were

1 located there followed the target leaving the area heading back
2 towards Albuquerque.

3 Q. Now, I think I may have asked you this question before.
4 You participated in the obtaining of other warrant, tracker
5 warrant, GPS, cell site information, warrant for Mr. Connors'
6 phone and Mr. Connors' vehicle?

7 A. Yes, sir.

8 Q. Who signed those warrants?

9 A. A district judge in Farmington, New Mexico.

10 Q. Were you involved in either the -- I'm just after -- I
11 don't think you were, but were you involved in either the
12 installation of the tracking device, or were you involved in
13 the cell site monitoring?

14 A. I was involved in the cell site monitoring because when you
15 get a ping for that, it will send the GPS location to your cell
16 phone or to your phone. So I was involved in that portion.
17 But as far as the installation of the GPS or the tracking
18 device, no, sir.

19 Q. Based on that cell site information, did you learn that
20 Mr. Connors had gone on a trip someplace?

21 A. Yes, sir.

22 Q. Where was that?

23 A. He went to an address in Phoenix, Arizona. Or in the area
24 of Phoenix. I don't know which town that was. I mean, I'll
25 have to look at that.

1 Q. Did he return from there to New Mexico?

2 A. Yes, sir.

3 Q. And at that point in time, was there a -- well, was there a
4 traffic stop in which Mr. Connors was arrested?

5 A. Yes, sir.

6 Q. Did you participate in that?

7 A. Yes, sir.

8 Q. But were you there at the beginning of that traffic stop?

9 A. I was there. It was almost simultaneous. After the
10 vehicle was stopped, the K-9 arrived, and we basically -- I had
11 helped out with the traffic on the highway, basically with a
12 flashlight, you know, making sure that the vehicles could see
13 us and so they could get in the other lane.

14 Q. You mentioned the K-9. For the record, what is a K-9?

15 A. The K-9 is a K-9 officer. He has a K-9 that's trained
16 in -- for narcotics and stuff like that.

17 Q. Is the dog trained in the detection of narcotics?

18 A. Yes, sir.

19 Q. So who owned this dog that was at that particular scene?

20 A. Farmington K-9 Officer Dennis Ronk.

21 Q. Was the K-9 present at the scene from the beginning of
22 traffic stop?

23 A. Yes, sir. Once the traffic stop was completed, we called
24 the K-9 officer over there immediately after the vehicle was
25 stopped.

1 Q. How long did it take him to get there?

2 A. Sir, it wasn't very long, because it was only a few -- they
3 were only a few miles away. He was only two miles away. It
4 wasn't a very long time at all.

5 Q. Did you also participate later in the interview of
6 Mr. Connors?

7 A. I did. After the traffic stop, yes, sir.

8 Q. But when did you come in on that interview?

9 A. It was going towards the tail end, middle portion, tail end
10 of the interview. I don't recall the specific time, sir.

11 Q. But had that interview already begun? Was it initiated by
12 other agents?

13 A. Yes, sir.

14 MR. CAIRNS: I think that's probably all the questions
15 I have at this time.

16 THE COURT: Cross examination, Mr. Samore.

17 **CROSS EXAMINATION**

18 **BY MR. SAMORE:**

19 Q. Mr. Verhulst, did I pronounce that correctly?

20 A. Yes, sir.

21 Q. Is that a Dutch name?

22 A. Yes, Dutch German, yes.

23 Q. Are you presently employed working for the State of New
24 Mexico?

25 A. San Juan County, sir.

1 Q. San Juan County.

2 A. Yes, sir.

3 Q. And you were employed by San Juan County at the time of
4 this incident. Am I correct?

5 A. Yes, sir.

6 Q. All right. Have you ever testified in federal court
7 before?

8 A. Yes, sir.

9 Q. Now, prior to making -- pardon me, prior to the stop that
10 you just concluded your testimony describing, you had the
11 opportunity to review the NCIC and any other criminal record of
12 Mr. Connors, didn't you?

13 A. I don't understand that question, sir.

14 Q. I'll back it up a little bit, then.

15 A. Okay.

16 Q. You had never met Terry Connors before this stop, had you?

17 A. No, sir.

18 Q. And you told the court, I believe, that you were present at
19 the time of this buy where you have a recording involving the
20 CI, and you were also present at the time he was stopped in
21 traffic on December 17th?

22 A. Yes, sir. On both of those occasions, I was present, yes,
23 sir.

24 Q. All right. Now, we can agree that the CI's name is [REDACTED]

25 [REDACTED]

1 MR. CAIRNS: I would like to object just a moment, if
2 we could approach or just be off the record for a moment.

3 THE COURT: We'll be off the record for just a moment.

4 (Off the record.)

5 THE COURT: You can move to strike that from the
6 question, then.

7 MR. CAIRNS: Thank you.

8 MR. SAMORE: So just identify him as the CI.

9 THE COURT: You can strike the record.

10 Q. (By Mr. Samore) We can agree that, prior to working with
11 you, the CI had accumulated a rather significant criminal
12 record, hadn't he?

13 A. Yes, sir.

14 Q. And as far as you knew prior to December 17, Terry Connors
15 had zero criminal record, didn't he?

16 A. I don't recall that, sir. I don't remember the exact
17 criminal history.

18 Q. Are you telling the court you never checked Terry Connors'
19 criminal history prior to December 17?

20 A. I did the inquiries on him, and we went through our intel
21 analyst. I'm trying to remember exactly everything we had
22 pulled on him. We did the registration, some registration
23 queries. We did some money order, like queries, the telephone
24 checks, the utility checks. But that was all in conjunction
25 with HSI and the Region II Narcotics Task Force, trying to

1 ascertain as much information about Mr. Connors at that time.

2 I don't remember or recall if I actually had a Triple I ran
3 on Mr. Connors at the initial portion of the investigation,
4 sir.

5 Q. Since December 17, have you had the opportunity to review
6 his criminal record?

7 A. No, sir.

8 MR. SAMORE: May I ask a question of the witness
9 regarding other names that were used by the CI?

10 THE COURT: I don't see a problem with that. Do you
11 have a problem with that? Are these other names that need to
12 be protected? That's my only concern.

13 MR. SAMORE: These are just first names or nicknames.

14 MR. CAIRNS: I don't have an objection to that. I
15 think they are just other aliases he might have.

16 THE COURT: That's fine.

17 Q. (By Mr. Samore) Did you know that the CI ever went by the
18 name of Richard or Shorty?

19 A. The confidential informant utilized in this case, sir?

20 Q. Yes.

21 A. Yes, I believe that he has an alias or a moniker of Short
22 Dog. Something to that effect, yes, sir.

23 Q. What about "Richard"?

24 A. No, I -- he's referred to as Shorty, and to my
25 recollection, his brother is referred to like T-bone, something

1 like that, you know. Those are the nicknames.

2 Q. My colleague from the government just described to the
3 court how this gentleman has been identified by name in the
4 record. I'm going to ask you a couple of questions about the
5 arrangement that you had with him prior to my client's arrest.

6 A. Okay.

7 Q. The first question is did he have an attorney representing
8 him when he negotiated or came to any agreement to work with
9 you?

10 A. No, sir.

11 Q. Was he in custody at the time that he came to this
12 arrangement with you?

13 MR. CAIRNS: Your Honor, I think that's a legal
14 opinion, and the other, I'm not sure what the relevance of this
15 inquiry is.

16 THE COURT: I think it's relevant. Can you rephrase
17 what you mean by "arrested"? Was he in jail?

18 Q. (By Mr. Samore) When he came to this agreement with you to
19 work, as you described in your direct testimony, was he in a
20 jail setting?

21 A. In our initial meeting with the source at this time, we met
22 at the Kirtland substation, and, yes, he was in custody at that
23 time.

24 Q. All right. And he was facing criminal charges.

25 A. Yes, sir.

1 Q. Do you remember what those criminal charges were at the
2 time he negotiated this deal with you?

3 A. Trafficking in controlled substance, sir.

4 Q. We know from his record that he has quite a number of these
5 prior arrests or convictions for this trafficking or drug
6 issue.

7 A. Yes, sir, he has a lengthy criminal history.

8 Q. Did you or someone on your behalf in law enforcement come
9 to a written agreement with the CI?

10 A. Yes, sir, there is a contract for working with Region II
11 Narcotics Task Force.

12 Q. Have you provided that contract to the United States
13 Government?

14 A. Sir, I provided -- I provided a lot of information, sir.
15 You know, I would have to look at the record, sir.

16 Q. I'm going to make a statement of counsel on the record
17 because this is a hearing. The defense, neither attorney, has
18 a copy of that agreement. So I'm going to try to ask a few
19 questions about that agreement because I don't know what's in
20 it. All right?

21 A. Yes, sir.

22 Q. All right. Thank you. The first question is going to be,
23 does that agreement in one of the terms -- it is probably a
24 written form, isn't it? Then you check certain boxes on the
25 side, something like that, or check certain blank lines to make

1 sure that the person has read it all and then you both sign,
2 something like that, isn't it?

3 A. Yes, sir. There is also an actual form where we read off
4 the rules. There is like 10 items that they will initial,
5 like, I'm not -- I can't act as a law enforcement officer. I
6 will not carry -- that type of stuff, all the way through. We
7 explain entrapment, you know, that type of stuff on there.

8 Q. You and I are understanding each other completely. Thank
9 you. Those are some of the terms I'm going to ask. One of
10 those terms is that he's not supposed to violate any other laws
11 when he's working in this capacity unless it's with your
12 knowledge doing, for example, a controlled buy.

13 A. That is correct, sir.

14 Q. Another one is he's not supposed to take illegal drugs, is
15 he?

16 A. Without the direction from the task force. If that's what
17 you're asking, sir.

18 Q. I think that's a fair answer. Sure. He might get in a
19 situation where he almost would have to smoke dope, for
20 example, rather than betray that he's working for the
21 government. I'm just creating an example, not specifically
22 this case. That's one of the situations where, to maintain his
23 cover, he would have to participate, perhaps, in illegal drug
24 actions.

25 A. That is not uncommon, but when we talk with our

1 confidential informants, we talk about stuff like that. What
2 is your excuse going to be? Oh, crap, I've got to meet with my
3 PO officer. I can't right now, I've got a really good job
4 interview. You have to have a quick response to that type of
5 stuff, yes, sir.

6 Q. Now, we've heard a couple of recordings of him today, and
7 he sure seems like a happy guy in counsel's opinion. He's
8 laughing in both of those conversations, isn't he? Do you hear
9 that today?

10 A. I mean, I heard the audios.

11 Q. You would agree that he kind of laughs his way through the
12 conversation with Mr. Connors, and he laughs his way through
13 the conversation, the second conversation. Did I describe that
14 pretty accurately? A lot of laughter by him, Mr. CI.

15 A. Nervous -- there was some laughter there, yes.

16 Q. There wasn't any laughter from Mr. Connors, and there
17 wasn't any laughter from the other person who was talking to
18 the CI, was there, in either conversation?

19 A. Can you restate the question?

20 Q. I'm just asking if you recall any laughter from either of
21 the other participants --

22 A. I think they just had a conversation between the two
23 people, you know. Meeting up and talking.

24 Q. You've had other conversations with him that weren't
25 recorded that we didn't hear this morning, haven't you?

1 A. Yes, sir.

2 Q. Now, I'm going to turn your attention to the date when
3 this -- we're going to call it the controlled buy occurred, the
4 buy of December 12, I think, where my client was supposed to be
5 involved, all right?

6 A. Yes, sir.

7 Q. You had checked prior to the control buy, you checked the
8 CI to see if he had any weapons or money on him?

9 A. Yes.

10 Q. Didn't check to see if he had any drugs in his system, did
11 you?

12 A. No, sir.

13 Q. You kind of are trusting him that he's going to come to
14 that deal and not have any drugs in his system.

15 A. Yes, sir.

16 Q. Even though you're aware that he has a long record for
17 probation violations, parole violations, failure to appear,
18 drug possession, that's one of those things you have to trust.

19 A. Yes, sir.

20 Q. Okay. Now, we're also kind of having to trust -- and I
21 certainly do trust you in your recollection of whatever this
22 agreement was, written agreement that you had that I've never
23 seen. You were signatory to that agreement, weren't you?

24 A. Yes, sir.

25 Q. Anybody else on behalf of law enforcement besides you?

1 A. It goes to our immediate supervisor, sir, and then they
2 will take a look at it, and we have to compile the packet of
3 information in there including, you know, a photo,
4 fingerprints, et cetera, that goes into that packet. Then that
5 packet gets signed off on, and then he's assigned -- then I'm
6 assigned what we call a TF number, and then from that point on,
7 that confidential informant will be referred to as like, you
8 know, TF number 551, and that's how we keep track of the money
9 or the contingency funds that are utilized through the
10 receipts. He'll sign his alias name, whatever name that is,
11 that he chooses, and then that way we keep it all together and
12 that is locked up in a safe, and the only access to that is my
13 supervisor and the secretary.

14 Q. Do you remember the date or the approximate date when you
15 and he signed that agreement?

16 A. No, sir, I would have to look at the agreement.

17 Q. Do you have that agreement in the courtroom or maybe
18 outside the courtroom --

19 A. No, sir.

20 Q. -- to refresh your recollection?

21 A. No, sir, I don't have that with us.

22 Q. Didn't bring it to court with you today?

23 A. No, sir.

24 Q. Did you review it in the last week, prior to this very
25 moment, to prepare for your testimony?

1 A. The contract, sir?

2 Q. Yes, sir.

3 A. No, sir.

4 Q. What else is in that packet besides the contract that you
5 have with Mr. CI? Can you just identify the documents?

6 A. Basically, the initial page is name, date of birth, if he
7 has a job, tattoos, where he's living, all of the pertinent
8 information, how tall, weight, that type of stuff. Then there
9 is another page of immediate family members that they would
10 tell us that live in the area, that type of thing, as just in
11 case we need to get in contact with them, or if we lose touch,
12 we have a starting point of that portion of that.

13 Then there is also another page where, you know, there is
14 some questions within that, you know. Driving history,
15 license, the vehicle that he drives, that type of stuff. So
16 there is a lot of different, little, small bits of information.

17 The main one is going to be the actual rules of the
18 contract, and he initials each one of them that he reads, and
19 we read together, and we kind of go over that type of stuff.
20 Then he signs that, and then we ask them to make up a name,
21 whether that be a president or a cartoon or whatever, and then
22 he'll tell us, I want to be called Salsa, and then we'll have
23 him present Salsa, and then have him sign Salsa. And that's
24 basically what he signs his -- when we give them money to go
25 ahead and purchase narcotics, he'll sign a receipt Salsa, and

1 then we'll put the TF number next to that, he's TF 551, that
2 way, you know, it will be kept together in one file.

3 Q. Now, who has access to that file information of the CI
4 besides you?

5 A. The only access once that gets in is going to be the
6 director of Region II Narcotics Task Force, which is Neil Haws,
7 my sergeant, Phil Goodwin, and our secretary has the keys and
8 access to the files and everything within the safe.

9 Q. If Mr. Cairns, for example, or someone from the United
10 States Attorney's Office wanted to just go take a look at that,
11 could they go to Farmington, or wherever it is kept, and take a
12 look at it, or would they have to get permission from someone
13 at your office?

14 A. No, sir, the procedure, you would request that information,
15 and then that information would be requested through the
16 attorney's office or whatever, and then our supervisor would
17 take a look at that along with the secretary. Then they would
18 ask, "Okay, this confidential informant for this particular
19 case has been formally requested to be disclosed." And then we
20 would talk about, "Okay, that's fine with us. Let's go ahead
21 and disclose them." And then you would request that
22 information, and we would pull that packet, and then that
23 packet would be redacted. So, like, all the pertinent
24 information about his personal stuff, that would be redacted,
25 blacked out, and then they make a copy of a copy of that, and

1 that's what would basically be sent to the office.

2 Q. Or even if it were the United States Attorney's Office, he
3 would probably get a redacted copy as well, wouldn't he?

4 A. Yes, sir. Also, with the -- depending on how many buys an
5 informant participated in, there is like a carbon copy, so you
6 have the original, a pink sheet and a yellow sheet underneath
7 that, and that information also would be redacted.

8 Q. What about the --

9 A. So you couldn't see the case numbers or that type of stuff,
10 sir.

11 Q. I'm sorry. What about the Attorney General of the State of
12 New Mexico? If he or she were attempting, wanted to look at
13 that file, would the same procedure have to follow where it
14 would be redacted, or you would review it, even if it is the
15 Attorney General?

16 A. If it's -- I've never had that happen. I don't know.

17 Q. What you're convinced --

18 A. That's the procedures that we go through, sir.

19 Q. I appreciate very much your obvious knowledge and honesty
20 in describing this to us. What certainly is emerging to this
21 attorney is that this information is pretty sensitive, pretty
22 important. You don't want it slipping out to just anyone.

23 A. That's correct.

24 Q. When Salsa, or whoever the person is, the CI, provides
25 information on other -- gets someone else arrested or doing

1 what they are probably supposed to do as far as their
2 agreement, does that go into the permanent file, showing that
3 they got -- we picked up Mr. X and Ms. Y and Mr. Z?

4 A. Can I -- okay, if what you're asking is if a CI does a -- a
5 particular CI does five different cases with us, in that file,
6 there will be five separate receipts with five different dates
7 and five different case numbers, and amounts and so forth. So
8 there will be different yellow receipts in that file for those
9 separate buys. It is not going to say that on this date and
10 time he bought from Joe number 1 and Joe -- you know what I
11 mean? It is just going to be a case number, a date, the amount
12 spent, and then at the bottom, it will be evidence and then a
13 comment like meth, cocaine, marijuana, pills, hydrocodone, the
14 amount. Then over to the side, it would be the total amount
15 spent for that transaction. And if the confidential informant
16 utilized in this case is being paid by -- with money, then
17 there is also a little line item, he was paid \$100 for this
18 particular controlled purchase. So you would have purchase of
19 evidence was \$400, and then payment to CI or confidential
20 informant was \$100, total amount paid, \$500, and then we
21 subtract that from our running total of how much cash that we
22 have in the book at that particular time.

23 Q. If we were trying to assess the reliability of this CI or
24 any CI, the record you have just described would be pretty
25 helpful in seeing if they are cooperating and fulfilling the

1 terms of their written agreement, wouldn't it?

2 A. Yes, sir.

3 Q. I'm not asking you now to disclose the file. I'm just
4 trying to go through the process. That's why I'm taking the
5 court's time and counsel's time to ask these questions.

6 Did this CI give information that led to the arrest or
7 prosecution of anyone besides these two gentlemen?

8 MR. CAIRNS: Objection, Your Honor. We're getting into
9 other cases, and this could actually endanger other
10 investigations. Potentially other defendants who might be far
11 more dangerous than Mr. Connors and Mr. Jones could be apprised
12 as to the information. Not only that, but I don't see the
13 relevance of it.

14 THE COURT: What's the relevance?

15 MR. SAMORE: Trying to assess the reliability of the
16 information that's being given by this gentleman as preliminary
17 to whether the warrant is sufficient. I think Mr. Verhulst has
18 been very --

19 THE COURT: How about if he just answers yes or no to
20 that question.

21 MR. SAMORE: Sure.

22 MR. CAIRNS: Yes, Your Honor, that's fine.

23 A. Can you restate the question?

24 MR. SAMORE: I'm going to have to ask the court
25 reporter to read it back.

1 (Question read.)

2 A. He has.

3 Q. (By Mr. Samore) Nevertheless, I think we've been informed
4 prior to this hearing by my colleague for the government -- I
5 think he asked you that question. This gentleman, the CI, has
6 been -- what's the word, kicked out of the program, removed
7 from the program, for violations?

8 A. Yes, he did not complete his contract, sir.

9 Q. What violations has he committed?

10 MR. CAIRNS: Your Honor, again, I think that we're
11 getting into the actual contents of the CI file which the
12 government has not agreed to disclose. That's a separate
13 battle.

14 THE COURT: Counsel, I'm going to sustain that
15 objection at this time.

16 Q. (By Mr. Samore) Let me approach the area, pending
17 objection and the court's ruling, in a different way. Do you
18 remember every term of the written agreement that this
19 gentleman, Mr. CI, signed with you?

20 A. No, sir.

21 Q. The terms would vary by whoever the CI is, wouldn't they?

22 A. Motivational terms or --

23 Q. I meant the written terms. I'm only asking the written
24 terms.

25 A. It is the standard contract, sir, and then there is a

1 portion or a paragraph on there that, you know, of why are you
2 wanting to work with Region II Narcotics.

3 Q. Now, I'm going to go into a final few questions, then
4 conclude my cross.

5 Do you have any information yourself that my client
6 personally made any money whatsoever from any of the alleged
7 deals he was involved in?

8 A. During the transaction in Cuba, he was given a large sum of
9 Region II contingency funds. As far as anything else, I...I
10 don't know, sir.

11 Q. You don't know if the amount that he was given went
12 entirely to someone else. But you do know that he received
13 money, I think, can we agree on that?

14 A. Yes, sir.

15 Q. Let's turn to a quick question or two on the actual
16 agreement, I believe, that you were -- pardon me, the
17 controlled buy. I believe your complaint that was signed by
18 you says you observed Mr. Connors and Mr. CI on December 12th
19 making some kind of a drug deal. Is that correct?

20 A. Agents did observe that.

21 Q. Do you recall what the -- just generally, anyway, what the
22 CI was wearing that day?

23 A. No, sir.

24 Q. Okay. What has me puzzled is that there is a reference
25 that he was -- I'm happy to provide you page 207 of discovery

1 is where I found it, that the CI was handed a rubber keyboard
2 and put it in his pocket. Do you remember that reference?

3 A. Yes, I believe it was the right front pocket. Is that what
4 was mentioned?

5 Q. That's exactly the reference I have.

6 A. Yes, sir.

7 Q. I thought a keyboard is pretty good size.

8 A. It is a rubber keyboard, kind of looked like a burrito, so
9 to speak.

10 Q. Now I understand that passage, because I was trying to
11 place that with the drugs that are supposed to have gone in.

12 All right. Let's turn to that stop that occurred on the
13 highway. Do you remember where that stop occurred or at what
14 time?

15 A. That occurred in Gallup, and it was near -- it was like
16 near the overpass area. It was very narrow on both sides of
17 the highway. I recall that, yes, sir.

18 Q. Who was present besides -- at that stop besides you?

19 A. There was a couple other agents from our department. Then,
20 of course, the Farmington K-9 officer arrived later on, and
21 then it was special agent with Homeland Security Chris was
22 there, and then I don't recall the other gentleman's name.

23 Q. How many vehicles, law enforcement vehicles?

24 A. At the time of the stop, there was a couple. Then ours
25 rolled up. We blacked out behind that, you know, waiting for

1 everything. And there was a delay in that. I don't recall,
2 sir. There was some vehicles lined up in the back over there.

3 Q. In addition to the three you just described, the dog
4 vehicle would have come with Officer Ronk. Isn't that true?

5 A. Yes, sir.

6 Q. I believe my colleague asked this question, and I'm going
7 to -- I don't think you gave -- this is what gives counsel
8 concern for some later questions. Once the traffic stop was
9 completed, were you on site at that time? Right then, that
10 moment?

11 A. When it was completed, I looked at it like they have
12 already taken Mr. --

13 Q. Thank you, let me rephrase the question. That's a very
14 good point. From the time my client's vehicle was stopped, do
15 you know approximately what time or how many minutes passed
16 before you were brought on scene?

17 A. I can give you an approximate, sir.

18 Q. That's all I'm asking.

19 A. Probably 10, 15 minutes. It wasn't very long.

20 Q. Where were you when you got the call on the stop?

21 A. Well, we were actually -- we went further out past Gallup
22 to try to identify the vehicle that Mr. Connors was in so we
23 could get on that as quickly as possible. So we could relay
24 the information back to the units that were in Gallup saying,
25 "Okay, we found the vehicle. They are at this mile marker.

1 Okay, this is the right plate number." That type of thing.

2 "Okay, it's coming your way. We'll be there in a couple of
3 minutes." That type of thing, sir.

4 Q. You were further east than where these gentlemen were
5 stopped?

6 A. Yes, I believe Agent Prince was further out. He was
7 probably, approximately, about 20 miles out is when we picked
8 up Mr. Connors' vehicle coming back into Gallup. That's when
9 we identified it, okay, that's the right vehicle. Then as it
10 got closer, we were calling out on the radio, "Okay, we're
11 passing this mile marker. Okay, yes, that's the vehicle," that
12 type of thing.

13 Q. So if the reports that I have read reflect that the vehicle
14 was stopped at mile marker 22, you would have been out around
15 mile marker 40?

16 A. No, sir. We went out that far. Then once we were able to
17 find the vehicle, we got in behind it and were, you know,
18 conducting surveillance of that vehicle as it got closer into
19 Gallup.

20 Q. You were driving behind the vehicle that was driven by
21 Mr. Jones?

22 A. One of the agents at one point in time, we were.

23 Q. I'm just trying to understand how it is 10 to 15 minutes
24 from the time the vehicle stopped until you get on site. I
25 thought you said --

1 A. Yeah. I mean, we were all in that general area, sir. I
2 mean, I can recall that I passed by the traffic stop and we
3 turned around and come back in waiting to make sure that, okay,
4 that he was cleared from the vehicle and that type of stuff.
5 Then we would come back on there. It wasn't very long.

6 Q. Did you prepare your own report about that stop?

7 A. I did a supplemental report of that, sir. I believe it is
8 dated on the 17th. It just describes that traffic stop and
9 basically what was seized from that traffic stop, sir.

10 Q. Your basis for -- pardon me, our clients were arrested, or
11 at least my client was, on the basis of that arrest warrant,
12 wasn't he?

13 A. I mean, within the totality of the whole situation. That
14 was a portion of that, yes, sir.

15 Q. You swore out an arrest warrant, and did you later swear
16 out a search warrant or just the arrest warrant?

17 A. Just the arrest warrant.

18 Q. All right. Then, do you know where Officer Ronk was with
19 the dog at the time the vehicle was stopped in traffic?

20 A. He was near the highway entrance to get onto -- to get onto
21 the highway. Gallup is a pretty small spot. You know. So he
22 was there in that general area, and then he was called in, and
23 he just jumped up on there and got in behind us.

24 Q. And he arrived after you, though?

25 A. Again, we were all in that area. I can't give you like --

1 he was there with those guys, and then I was also there because
2 I was helping with the traffic of that, because having the dog
3 on the highway with not a lot of space of a pullout, it was
4 making sure that the semis and stuff like that were moving
5 around while the HSI agents and the K-9 were conducting their
6 investigation, sir.

7 MR. SAMORE: Thank you, Officer, for your attention.
8 Pass for further examination.

9 THE COURT: Mr. Robert?

10 MR. ROBERT: Thank you, Your Honor.

11 **CROSS EXAMINATION**

12 **BY MR. ROBERT:**

13 Q. Well, I'm going to start where you guys finished, Agent.
14 Is that the proper way to address you?

15 A. Yes, sir, or Verhulst, Devin.

16 Q. Verhulst, Devin. Like Mr. Samore, I'm trying to get my
17 head around sort of the logistics, the chronology of what
18 happened when. I looked at -- I'm sure that you looked at the
19 various reports that had been prepared and submitted in
20 connection with that stop on the 17th of December of last year.

21 A. I've looked at my report, sir. I helped get the K-9
22 officer's report over as well.

23 Q. So you looked at his report?

24 A. I looked at some reports, yes, sir.

25 Q. You looked at Officer Ronk's report?

1 A. I mean, I retrieved that report so I could forward it as
2 part of the case file, sir.

3 Q. Have you looked at Officer Ronk's report?

4 A. I have. I don't recall a lot of...

5 Q. That's fine. Officer Ronk is a Farmington Police
6 Department K-9 handler, right?

7 A. Yes, sir.

8 Q. Farmington is a good distance from where this stop
9 occurred?

10 A. Yes, sir.

11 Q. All right. So I think in his report, he says he was
12 contacted at, I think he said, 1700, which is five o'clock.

13 No, I'm sorry, 1930, so that's 7:30 p.m., right?

14 A. 1930, 7 and 12, yeah.

15 Q. And the stop -- help me. If I'm wrong about any of this or
16 you have a better sense of the timing of it, let me know; but
17 in looking at the report, it looks like somebody first picked
18 up the vehicle about ten o'clock, 2200, this is the vehicle
19 that Mr. Connors and Mr. Jones were in that was stopped near
20 mile marker 22.

21 A. Okay.

22 Q. Okay. It seems as though in the reporting that somebody
23 said that there was visual contact of that vehicle made at 2200
24 about, ten o'clock. Okay?

25 A. All right.

1 Q. Is that right, or is that not?

2 MR. CAIRNS: I'm sorry, Your Honor, again, I realize
3 the Rules of Evidence don't apply here, but I would ask
4 Mr. Robert to ask questions instead of trying to cross-examine
5 with the witness about reports that he didn't provide.

6 THE COURT: Just say you don't know or don't remember
7 if you don't know.

8 Q. (By Mr. Robert) The question, was the vehicle first
9 visually observed by one of the officers involved in this
10 operation on December 17th at about ten o'clock that night?

11 A. I don't know, sir. I don't recall.

12 Q. The stop was made at about quarter of 11:00, 10:45?

13 A. I don't recall.

14 Q. Do you have your supplemental report with you?

15 A. I think it is outside in my vehicle.

16 Q. Do you have anything that might help you refresh your
17 recollection about this thing that happened 10 months ago, nine
18 months ago?

19 A. No, sir.

20 Q. Okay. Do you remember what time it was that you arrived on
21 the scene of the stop?

22 A. No, sir.

23 Q. Okay. Do you remember --

24 A. It was dark out, sir. It was dark and cold.

25 Q. Okay. Watches work in the dark and the cold, don't they?

1 THE COURT: Mr. Robert, do you have anything that would
2 help refresh his recollection so we can move this along?

3 MR. ROBERT: Part of the problem is I have some
4 reports. I don't have his supplemental, so, no, I don't have
5 that, and I wish I did, because it might provide some
6 additional information. But in terms of providing this officer
7 with something that he prepared that's relevant to these
8 questions, no, I don't.

9 THE COURT: Mr. Cairns, do you know if you have that
10 report?

11 MR. CAIRNS: I know that I don't have it because I
12 disclosed everything that I have. If this is relevant, perhaps
13 we should take a recess and give it to Mr. Robert.

14 THE COURT: Can we do it as quickly as possible, say 10
15 minutes, if possible? We'll wait for you. Is your car far
16 away sir?

17 THE WITNESS: It's just right down the street.

18 THE COURT: We can make copies. We'll take a quick
19 recess, then, thank you.

20 (Court recessed at 10:47 a.m. to 11:03 a.m.)

21 THE COURT: Court is back in session.

22 MR. ROBERT: Your Honor, I want to make it clear for
23 the record, I actually did have what I was provided. It
24 doesn't -- when agent talked about a supplemental report, I'm
25 used to seeing it look like a supplemental report. I didn't

1 have something I was envisioning based on the testimony. I do
2 have the information that was provided to me.

3 THE COURT: Great.

4 Q. (By Mr. Robert) It doesn't have anything about, for the
5 most part, the timing of things that happened on the evening of
6 December 17th of last year.

7 A. That is correct, sir.

8 Q. So you talked about the things that you did. You went to
9 the Thrifty Car Rental place here in Albuquerque that morning.

10 A. I did not, sir.

11 Q. There is a reference to that in the thing that you
12 reviewed, your narrative of 12/17/2012, right?

13 A. Yes, sir.

14 Q. And then you made the general reference to the traffic stop
15 and the items that were seized during the traffic stop.

16 A. Yes, sir.

17 Q. Okay. So I'm not going to try to pin down the timing of it
18 with you, though I do want to kind of get a general sense,
19 because I think we're left a little confused about geography
20 and maybe even about some aspects of the timing. So the
21 vehicle was traveling from Arizona to Albuquerque, right?

22 A. Yes, sir.

23 Q. This is the vehicle that Mr. Jones and Mr. Connors were
24 stopped in --

25 A. It was traveling from Phoenix to Albuquerque.

1 Q. So west to east.

2 A. Okay.

3 Q. Right?

4 A. I'm not good at directions. You go down one way and come
5 back the other.

6 Q. California is west, New York is east. Phoenix is west of
7 Albuquerque, right?

8 A. Okay.

9 Q. Do you think that's right?

10 A. I don't know I-40 west. Is it I-40 West going down there?

11 Q. If you're going to Arizona, it is west; if you're coming
12 back here, it's east.

13 A. Okay, we're square.

14 Q. Between Phoenix and Albuquerque is Gallup.

15 A. Yes, sir.

16 Q. And Gallup is about where the stop took place.

17 A. Yes, sir.

18 Q. Mile marker 22 is in the Gallup area.

19 A. Yes, sir.

20 Q. All right. And it's my understanding that, when you were
21 talking to Mr. Samore, you talked about basically picking up
22 the vehicle by way of surveillance before the stop was made.

23 A. Yes, sir.

24 Q. And well before, I think is what -- is my impression of all
25 this. In Arizona would be my specific question.

1 A. It might be close to that, sir. I mean, I don't know. I
2 mean, I do recall we were pretty far out there. We were trying
3 to set up -- you know, we would have agents -- one of the
4 agents was going to be the furthest one out, and then we had
5 another one a little bit not as far, and then -- so we just
6 wanted to create a zone to where we could pick that vehicle up
7 so it didn't get through what we were trying to do.

8 Q. Was there anybody actually physically following at this
9 time, or was it just people stationed?

10 A. There was people stationed, but once we got on the right
11 vehicle, sir, yes, we backed off, created some distance there,
12 and would be calling out, "This is where we're at."

13 Q. Eventually, the vehicle was stopped after it crossed the
14 New Mexico-Arizona line and got to the Gallup area.

15 A. Again, I don't know about the Arizona part, because I don't
16 think Gallup -- from Gallup to the Arizona border is 20 miles
17 out, it may be, but in that general area, you know.

18 Q. Where are you ordinarily when you're working? What's your
19 general beat?

20 A. Farmington, Aztec, New Mexico. You know, in Bloomfield,
21 all in that general area.

22 Q. So that's north of where we're talking about here. You're
23 not terribly familiar with I-40?

24 A. Oh, we are. We are. But I mean, I want to be accurate
25 with you and not say --

1 Q. I appreciate it.

2 A. If it was near the Arizona border, I don't know. I'm
3 saying approximately 20 miles out or so.

4 Q. Are you aware that the mile markers zero out at the state
5 line and start from zero at that point and go up as you go
6 toward Albuquerque?

7 A. No, sir. I'm not aware of that.

8 Q. Would you agree with me that mile marker 22, Gallup, is
9 about 20 miles this side of the Arizona border, or do you not
10 know?

11 A. I don't know, sir. I just call out the locations where
12 we're at and where we're going.

13 Q. All right. Again, I think there will be other witnesses
14 that we can talk about this with, so we won't pester you with
15 this anymore.

16 But I do want to know about the call-out to Officer Ronk in
17 Farmington. That had to have occurred several hours before the
18 actual stop was made, didn't it?

19 A. As a notification to him that we had an operation?

20 Q. Yes, that he might be needed to participate in.

21 A. Oh, yes, sir. Yes, sir. We'll call, and then we'll call
22 dispatch and find out, you know, who is the on-call K-9 units
23 for a particular time, or who's working that day, that type of
24 thing.

25 Q. Okay. And so you called well before the stop actually took

1 place to make sure that there was going to be a K-9 officer
2 available to you for that purpose.

3 A. That call was made, yes, sir.

4 Q. Do you remember about when?

5 A. No, sir.

6 Q. Okay.

7 A. Usually, that's taken care of by our supervisor, sir.

8 Q. Okay. I want to talk a little bit about the CI. I want to
9 nail a couple of things down. Based on my reading of what I've
10 been given, your first encounter with this fellow was on
11 December 11th of 2012. Is that correct?

12 A. Right around there, yes, sir.

13 Q. So he was under arrest, he was charged with some
14 trafficking offense, and he was in the police station in
15 Farmington?

16 A. In Kirtland. The Kirtland substation.

17 Q. Okay. So that's actually on the Navajo Reservation, right?

18 A. No, sir. That's in Kirtland, New Mexico, just outside of
19 Farmington.

20 Q. Right. Okay. Kirtland, New Mexico, in the Four Corners
21 area near Farmington.

22 A. Yes, sir.

23 Q. And you had never met him before.

24 A. I had known of him because of my being on the streets and
25 stuff like that, yes.

1 Q. Then you had known of him as somebody who was involved in
2 the drug trade in some capacity?

3 A. Yes, sir.

4 Q. Somebody who was a drug user?

5 A. Yes, sir.

6 Q. Before December 11, 2012, you had no knowledge of this
7 fellow other than as somebody who is a user and maybe a seller
8 of drugs.

9 A. Knowledge -- yes, sir.

10 Q. He had never provided you with information about any other
11 case prior to the information that he provided in this case.

12 A. That is correct.

13 Q. You have never had an opportunity before this case to
14 establish any credibility or reliability on his part.

15 A. This was the initial -- yes, sir.

16 Q. So when you say that you had a level of reliability or
17 credibility or that you had some level of trust in him, it was
18 entirely based on the things that we're here to talk about.

19 A. Yes, it was based on, you know, him giving us the
20 information and then us going out there and corroborating that
21 independently of him, and, you know, one thing to another thing
22 to the controlled purchase, everything to the accumulation of
23 the investigation.

24 Q. Okay. It's pretty easy for you to get criminal record
25 information on somebody, isn't it?

1 A. I wouldn't -- yes, we can request Triple I's, and then you
2 have to explain to dispatch why you are requesting it, whether
3 that be for felon in possession or something like that, yes,
4 sir.

5 Q. You do it all the time in the course of an investigation,
6 right?

7 A. Request information?

8 Q. Request Triple I information, criminal history.

9 A. Yes, sir.

10 Q. I'm sure that you did it with respect to Mr. Connors and
11 what you learned of his identity, Mr. Jones.

12 A. I did -- I don't recall --

13 MR. CAIRNS: I think that counsel is mischaracterizing
14 his earlier testimony, so I'm going to object to lack of
15 foundation to the question.

16 Q. (By Mr. Robert) Okay. You testified on direct, maybe it
17 was on cross with Mr. Samore, that you don't remember whether
18 you ran a criminal history on this fellow, the CI, that you met
19 on the 11th and began to use as a CI on the 12th. It's not
20 possible that you didn't --

21 A. Can you restate that? I thought you got it confused with
22 the CI versus Connors, sir.

23 Q. Well, you talked about both, I think, on cross examination.
24 So let's break it down. Let's talk about the CI. You met this
25 fellow on the 11th of December, right?

1 A. Approximately. It might have been the night before, you
2 know. Are you talking about the actual when did our
3 confidential informant get arrested or --

4 Q. When you met him.

5 A. Well, it was during a post-arrest interview, it was during
6 the interview at that time at the Kirtland substation.

7 Q. Right. And I think -- --

8 A. The date on my report for the initial information that I
9 was provided by the confidential informant was December 11th,
10 sir, but I may have spoken -- he may have been arrested like
11 the night before, you know.

12 Q. That's fine. My question to you, sir, is when you first
13 met the guy. I think you said December 11th when we talked
14 about it just a few minutes ago.

15 A. Yeah, in and around there, yes, sir.

16 Q. All right. You became aware that you were considering
17 using him as a confidential informant around that time.

18 A. That is correct, yes, sir.

19 Q. I can't imagine that one of the first things that you would
20 do would not be to get a criminal history for this guy.

21 A. That's part of the packet that we put together, is not only
22 the information packet, the photos, the fingerprint cards, the
23 Triple I, all of that is put together in the full packet.

24 Q. All right. So you did run a criminal history on the CI
25 around the time that you started using him for information.

1 A. On the confidential informant, yes, sir.

2 Q. All right. So at that time, you knew that he had a
3 criminal history going back to 1996?

4 A. It's a lengthy criminal history, yes, sir.

5 Q. That included multiple DWIs, domestic violence, and
6 possession of drugs and trafficking, forgery.

7 A. It's an extensive criminal history, sir.

8 Q. Is that a yes?

9 A. Yes, sir.

10 Q. Several failures to appear in and violations of probation
11 or parole? Yes?

12 A. That sounds about right, without looking at his full
13 criminal history right here.

14 Q. I have to ask you, though, one of the things we were
15 provided, first redacted form without identifying the
16 individual, then more recently with the name, and there were a
17 lot of records, a lot of references to various arrests. One of
18 the things that's not on here, though, is an arrest around
19 December of 2012 for a trafficking offense. What happened to
20 that case?

21 A. It's still going on, sir.

22 Q. Okay. All right. So he's still being prosecuted for
23 whatever it was that he was arrested for in December of 2012?

24 A. Yes, sir, it was referred to --

25 THE WITNESS: Right? I mean...

1 MR. CAIRNS: He's having difficulty with this because
2 it is currently -- there is currently a discussion as to
3 whether or not it will go federal or state.

4 Q. (By Mr. Robert) I don't care about that.

5 A. It is moving forward, sir.

6 Q. All right. That's fine. I was just curious as to why it
7 didn't show up. There are things in 2013 that show up, FTA's
8 and stuff, and not this thing. I was curious as to why that
9 was. If you don't know why --

10 A. I don't know, sir.

11 MR. ROBERT: I recognize that the court ruled earlier
12 that there wouldn't be any conversation about the specifics
13 about why this CI was terminated.

14 THE COURT: Not at this time, Mr. Robert. We can
15 address that at the end of this motion to suppress, but I think
16 we have four more witnesses we need to get to.

17 MR. ROBERT: That's fine, Your Honor, I appreciate
18 that.

19 Q. (By Mr. Robert) Let me see if there was anything else I
20 really needed to talk about.

21 When the controlled purchase took place, you've told us
22 that it took place in Cuba, and you said that there was a
23 period of time that the CI drove from someplace to Cuba where
24 this thing took place. Where did he drive from?

25 A. Well, it was a little dirt pull-off road, you know, little

1 road before you get to Cuba.

2 Q. So you --

3 A. Off of Highway 550. We took a little side road, drove down
4 there, and took care of it right there.

5 Q. You staged with the CI before the controlled purchase not
6 far away from Cuba, then?

7 A. Yes, it wasn't relatively too far.

8 Q. And what contact did you have with him during the time that
9 you moved from your staging area to the place at which the
10 controlled purchase took place?

11 A. I mean, we had eyes on him all the way through and into the
12 gas station. Other agents were set up on the perimeter and
13 monitoring that.

14 Q. I counted 10 agents including you. Is that a fair
15 assessment, do you think?

16 A. That's a fair assessment from our task force, yes, sir.
17 That's not including the other agents, you know, that were also
18 there.

19 Q. From what agencies?

20 A. Homeland Security, sir.

21 MR. ROBERT: I think that's all the questions I have.
22 Thank you, Your Honor.

23 THE COURT: Do you have any redirect?

24 MR. CAIRNS: I do have some questions. Very brief,
25 Your Honor.

1 **REDIRECT EXAMINATION**

2 **BY MR. CAIRNS:**

3 Q. You were asked by Mr. Samore whether, when the CI showed up
4 for this transaction, if you tested him for drugs right there
5 to make sure that he wasn't on controlled substances. Do you
6 have in fact equipment in your vehicle that you can use to do
7 that?

8 A. No, sir.

9 Q. And was there any -- did he give any obvious signs of being
10 intoxicated or under the influence of drugs?

11 A. No, sir.

12 Q. Okay. Now, with regard -- you've been asked repeatedly
13 about the confidential informant and the information that he
14 provided to you. Was there a single piece of information that
15 the confidential informant provided to you that you took for
16 granted, in other words, without trying to corroborate it?

17 A. No, sir. We tried to corroborate everything that he was
18 describing to us.

19 Q. In your experience as a narcotics detective, are these
20 people who come to work for you sometimes -- do they often have
21 lengthy criminal record?

22 A. Some of them do, sir, yes, sir.

23 Q. Is that a necessary evil of narcotics work?

24 A. Yes, sir, to try to identify a source of supply or a main
25 source of supply, and then trying to track that, to how it's

1 getting into our community, yes, sir.

2 MR. CAIRNS: I think that's all the questions I have,
3 Your Honor.

4 THE COURT: All right. May this agent be excused?

5 MR. CAIRNS: Yes, Your Honor, subject to potential
6 recall, although I think that's not going to be necessary, but
7 yes.

8 THE COURT: So you will have to wait outside.

9 Please call your next witness.

10 MR. SAMORE: I want to make a record on this if I may,
11 Judge.

12 Pardon me, Mr. Cairns.

13 Judge, before this witness is excused, I would at least
14 ask to make a record for the court. Here is my request. We
15 are requesting that the court reconsider its ruling that we
16 cannot ask this witness questions about why this CI was
17 terminated from the program.

18 THE COURT: And I will reconsider it and deny it at
19 this time, Counsel.

20 MR. SAMORE: Thank you, Judge.

21 THE COURT: All right. He will still be available.
22 And we will address -- I understand that you withdrew your
23 motion. Mr. Robert still has an outstanding motion, or parts
24 of a motion that are not ruled on, so we will address that at
25 the conclusion of this evidentiary hearing.

1 MR. CAIRNS: Government calls Homeland Security Senior
2 Agent Chris Martin.

3 Your Honor, I'm going to try to move this along. That
4 was our longest witness that we had.

5 THE COURT: Would you please raise your right hand.

6 CHRIS MARTIN,

7 after having been duly sworn, testified as follows:

8 THE COURT: Please state your name for the record.

9 THE WITNESS: My name is Chris Martin. I'm a special
10 agent with Homeland Security Investigations.

11 DIRECT EXAMINATION

12 BY MR. CAIRNS:

13 Q. That answers my first question. How long have you been
14 with HSI?

15 A. Since 2008, sir.

16 Q. Before that, were you a law enforcement officer with
17 another entity?

18 A. Yes, sir, I was.

19 Q. What is that?

20 A. I was a Customs and Border Protection Officer for the
21 Department of Homeland Security since 2001.

22 Q. Before that, were you a law enforcement officer?

23 A. Yes, sir, I was. I was with the El Paso Police Department
24 since 1996.

25 Q. All right. What currently are your duties with HSI? I

1 guess what I mean by that is, do you work a specific kind of
2 case?

3 A. Yes, sir, I'm currently assigned to the Border Enforcement
4 Security Task Force here in Albuquerque, which is task force
5 comprised of state and local entities, as well as special
6 agents with Homeland Security Investigations, and right now, we
7 are working narcotics investigations. The majority of our
8 investigations are narcotics investigations.

9 Q. In your career as a law enforcement officer, have you had
10 opportunity to do narcotics investigations?

11 A. Yes, sir, I have.

12 Q. In this case, did you participate in any surveillance of
13 Mr. Connors or any surveillance of his home or of his vehicle?

14 A. Yes, sir, I did.

15 Q. Can you tell me -- first of all, how did you get involved
16 in the case?

17 A. We were involved -- we were assisting Special Agent Kepf
18 Region II Narcotics Task Force up in Farmington. They had
19 identified a person who was residing in the Albuquerque area.
20 They provided us some information, and the date was the 17th, I
21 believe. We assisted Agent Kepf at the Sunport car rental
22 agencies trying to identify subject known as TC, later
23 identified as Terrence Connors.

24 Q. Did you also participate in a surveillance that was
25 connected or associated with a controlled buy of narcotics?

1 A. Yes, sir, we did.

2 Q. Tell me about that.

3 A. I don't recall the date, but I know it was a couple of days
4 before the 17th, that we were -- I'm sorry --

5 Q. Go ahead.

6 A. We were notified that the subject known as TC was going to
7 be departing the Albuquerque area, and that he was going to be
8 heading to Cuba. And we proceeded to follow a vehicle that we
9 had identified earlier that day as belonging possibly to
10 Terrence Connors.

11 Q. All right. What kind of vehicle was it? Do you remember?

12 A. No, sir, I don't. Not without looking at the report.

13 Q. Well, where did it go? Where did that vehicle go?

14 A. The vehicle -- we were following surveillance on that
15 vehicle that evening, and we followed it up to Cuba where
16 Region II Narcotics agents were already on scene. And once we
17 notified them that the vehicle was in the area, they asked us
18 to go ahead and back off, and we stayed in the periphery area
19 while they conducted their surveillance and the operation.

20 Q. What happened with that operation at the conclusion?

21 A. When that operation concluded, we ended up following the
22 vehicle back to the Albuquerque area, and we relayed the
23 information that the operation was a success, and that the
24 vehicle that we had followed up was going to be returning to
25 Albuquerque. And at that point, we followed it back.

1 Q. Where did it arrive in Albuquerque? Did it arrive at a
2 specific home or location?

3 A. Yes, sir, I believe it was 1514 Gold Avenue in northeast
4 Albuquerque, I believe.

5 Q. Is that where Terrence Connors lives?

6 A. Yes, sir.

7 Q. Did you in fact subsequently participate in a search of
8 that residence?

9 A. On the 18th of December, yes.

10 Q. So my question is, is that how you know that that's where
11 Terrence Connors lives?

12 A. Yes, subsequent to the operation conducted on the 17th,
13 sir, we identified that location as a positive location for his
14 residence.

15 Q. And did you also participate in the traffic stop that
16 occurred in this case?

17 A. Yes, sir, we were the primary contact on the traffic stop.

18 Q. Can you tell me what happened during the traffic stop.

19 A. Yes, sir, myself and Enforcement Security Task Force
20 Officer Peter Fabian, who is a CDP, he was the driver that
21 evening, we were in a marked patrol unit, U.S. Customs and
22 Border Protection marked unit which has lights and sirens on it
23 and police markings on it. We were advised that Terrence
24 Connors had rented a vehicle early that morning and had
25 possibly gone to Phoenix, and we were waiting for him to return

1 from the Phoenix area back into the New Mexico area. Region II
2 agents were able to identify the subject driving back in the
3 vehicle, and at that point, they instructed us to go ahead and
4 conduct the traffic stop.

5 Q. Did they relay to you the information as to what kind of
6 vehicle that was?

7 A. Yes, sir.

8 Q. Did you also know what kind of vehicle it was based on your
9 own investigation?

10 A. Yes, sir.

11 Q. And what investigation was that?

12 A. Early that morning, as I stated before, we had gone to the
13 Sunport car rental agencies with a picture, and one of the
14 agents was able to identify Terrence Connors as a renter of a
15 vehicle from their agency, rental car agency, and that's the
16 vehicle we provided Region II a description of, and they were
17 able to positively view the vehicle, and also saw Mr. Connors
18 as a passenger in that vehicle, and relayed that information to
19 us when we were down in the Gallup area waiting for the car to
20 approach.

21 Q. So tell me what happened during the traffic stop itself.

22 A. Yes, sir. So Officer Fabian went ahead and pulled the
23 vehicle over. We already knew that there was a warrant that
24 was being held by the Region II agents, so we went ahead and
25 stopped the vehicle at that point. We identified the driver.

1 We went ahead and conducted what we call a felony stop. We got
2 out of the vehicle. Peter Fabian instructed the driver to go
3 ahead and exit the vehicle.

4 Q. Let me back up for just a moment. When you say "felony
5 stop," were you aware as to whether or not there was a felony
6 arrest warrant out for Mr. Connors?

7 A. Yes, sir, we were.

8 Q. And was there in fact such a warrant?

9 A. Yes, sir, there was.

10 Q. So describe for me the felony arrest stop and how that
11 works.

12 A. Yes, sir. So we proceeded to stop the vehicle
13 approximately -- I think it was I-40 eastbound from the Gallup
14 area, around mile post 22, I believe. So once we had the
15 vehicle stopped, he pulled directly over to the right.
16 Mr. Fabian went ahead and over the PA instructed him to go
17 ahead and turn the vehicle off, put their hands where we could
18 see them.

19 And the driver was reaching underneath the seat as we
20 conducted -- while he was being given instructions. We later
21 identified the driver as TC -- I'm sorry, not TC. That was
22 Jones, Mr. Jones. And we observed him reach underneath the
23 seat. We didn't know what the movement was for, whether he was
24 trying to hide something or put something in his hand. At that
25 point, he was instructed to step out of the vehicle with his

1 back facing us. Mr. Fabian then instructed him to walk
2 backwards back to us into a position where we could get -- take
3 him into custody, and he was handcuffed and patted down for
4 weapons.

5 Q. At this point in time, were weapons drawn by the officers
6 that conducted the stop?

7 A. Yes, sir.

8 Q. Did you also ask Mr. Connors to leave the vehicle?

9 A. Yes, sir. After we got Mr. Jones into custody, we
10 conducted an initial pat-down for firearms, and once he was in
11 custody, he was moved over to the side by one of the other
12 agents or officers, and then, at that time, we began to
13 instruct Mr. Connors to exit the vehicle in the same manner.

14 Q. Did he do so?

15 A. Yes, sir, he did.

16 Q. After Mr. Connors had exited the vehicle, did you further
17 make an attempt to assure yourselves that the vehicle didn't
18 contain any other items?

19 A. Yes.

20 Q. Did it contain any other occupants?

21 A. No, sir.

22 Q. At that point in time, were the weapons put away?

23 A. Yes, sir.

24 Q. Now, on your inspection of the vehicle itself, did you or
25 any of the other agents observe from the outside of the vehicle

1 any contraband?

2 A. Yes, sir, we observed a pipe, a glass pipe, that was stuck
3 in between the seat and the door frame in the vehicle on the
4 driver's side where we believe Mr. Jones was trying to
5 manipulate that area during the traffic stop, the initial phase
6 of the traffic stop. It was photographed, and through my
7 training and experience, I know that glass pipe to be a meth
8 pipe. There was also a white residue at the bottom of the pipe
9 as well.

10 Q. I would like to hand you what's been marked as Government's
11 Exhibit 1. Can you tell me what that's a photo of?

12 A. That's the photo of the glass pipe that was found by
13 Officer Fabian.

14 Q. Is that what it looked like that day?

15 A. Yes.

16 MR. CAIRNS: Move for admission of Government's Exhibit
17 number 1.

18 THE COURT: Any objection, Counsel?

19 MR. ROBERT: No, Your Honor.

20 MR. SAMORE: None, Judge.

21 THE COURT: Government's 1 will be admitted.

22 (Government's Exhibit 1 admitted.)

23 Q. (By Mr. Cairns) So that's the methamphetamine pipe that
24 you observed from outside the vehicle?

25 A. That's correct.

1 Q. And that was prior to the search of the vehicle?

2 A. That's correct.

3 Q. Was a dog also deployed on the vehicle?

4 A. Yes, sir. There was a K-9 officer that was called to the
5 scene, and he deployed his K-9 dog, drug detection dog, to the
6 vehicle.

7 Q. And what was the result of that?

8 A. There was a positive response according to the K-9 officer.
9 There was a positive response to the driver's side where
10 Mr. Jones had been seated, and the K-9 also alerted or showed
11 an indication, positive response, to the back seat where there
12 was luggage located.

13 Q. So did you subsequently search the vehicle?

14 A. Yes, we did.

15 Q. What did you find?

16 A. We ended up finding -- of course, at that point, we
17 retrieved the pipe. We also went back and looked into the
18 luggage where the dog had alerted. As I opened up a bag in the
19 back seat, there was a pair of tennis shoes contained within an
20 interior bag. In the tennis shoes, there was a bundle. Inside
21 of the socks was two taped bundles which in my training and
22 experience I knew to be narcotics or the way that narcotics are
23 held.

24 Q. Packaged?

25 A. Packaged, right, correct.

1 Q. Was there -- did somebody field test that system?

2 A. Yes, sir, we did.

3 Q. What was the result?

4 A. It was positive for methamphetamine.

5 Q. Did you also find a firearm inside the vehicle?

6 A. Yes, sir, in the same bag contained within a gun container,
7 gun case, we also found a Glock 17 nine millimeter.

8 Q. Was the weapon loaded?

9 A. It was, sir.

10 Q. Did you subsequently participate in a search of

11 Mr. Connors -- I think I asked you that question, already, I'm

12 sorry. Did you participate in a search of Mr. Connors'

13 residence?

14 A. Yes, sir. When we got him back to Albuquerque, Mr. Connors
15 provided us consent to search his home.

16 Q. When did he provide that consent? What were you doing when
17 he decided to consent?

18 A. We were back at the Albuquerque office processing the
19 evidence that we had retrieved from Gallup, and they were
20 continuing the process of criminal processing for him at the
21 office.

22 Q. And were you preparing a search warrant at that time?

23 A. Yes, sir, I was writing up a search warrant at that time.

24 Q. I would like to approach, and I'm handing you what's

25 Government's Exhibit Number 3. Can you tell me what that is?

1 A. Yes, sir, that's a consent to search Mr. Connors'
2 residence, and I misstated earlier. It was 1517-1/2 Gold
3 Avenue, Southeast, Albuquerque.

4 Q. Did you prepare this form yourself?

5 A. Yes, sir, I did.

6 Q. Is that your signature at the bottom?

7 A. It is.

8 MR. CAIRNS: I would move for the admission of
9 Government's Exhibit Number 3.

10 THE COURT: Any objection, Counsel?

11 MR. SAMORE: I think it is an unredacted document, so I
12 would like to look at it. No objection, Judge.

13 MR. ROBERT: No objection.

14 THE COURT: Government's 3 will be admitted.

15 (Government's Exhibit 3 admitted.)

16 Q. (By Mr. Cairns) Does this document also bear the signature
17 of Terrence Connors?

18 A. That's correct, sir.

19 Q. Did he sign this in your presence?

20 A. Yes, sir, he did.

21 Q. This is after you discussed it with him?

22 A. Correct.

23 Q. And did he express any reservations about consenting to a
24 search of his residence?

25 A. No, sir. Up to that point, he had been totally cooperative

1 with us. He was still a little bit nervous with the encounter
2 of police, but he was coherent and participated voluntarily.

3 Q. Based on this consent form, did you subsequently also
4 finish up and execute that search warrant?

5 A. We did complete the search warrant, but after speaking to
6 the United States Attorney's Office, because we had been
7 granted consent, they requested that we just go ahead and
8 conduct the search on the consent.

9 Q. What did you find inside the residence?

10 A. We went -- when we arrived at the house later on that
11 morning, we found several firearms located within a safe in the
12 bedroom closet, and then we found additional narcotics and
13 currency.

14 Q. All right. Now, let me ask you this, because this is in
15 one of the motions. Did Mr. Connors express concern over his
16 dog?

17 A. He did, sir.

18 Q. What did he say to you?

19 A. He told us that he had a dog named Gateway at the home that
20 was by itself, and he expressed concern for its safety and
21 well-being.

22 Q. Did you try to help Mr. Connors with regard to the dog?

23 A. Yes, sir, we did. I think that the agents allowed him to
24 make a phone call to a family member to later on pick up the
25 dog after we had finished with the search. We also took

1 Mr. Connors to the residence with us, at which time we allowed
2 him to take possession of the dog while we conducted our
3 search.

4 Q. In fact, did you remove his handcuffs?

5 A. Upon arrival, after we secured the residence, made sure
6 there was no other people in the residence that would cause any
7 harm or issues, we allowed him to be unhandcuffed, and he sat
8 on the couch with Gateway as we conducted the search.

9 Q. I would like to, with the court's permission, approach and
10 hand you what's been marked as Government's Exhibit Number 6.
11 Can you tell me what that is?

12 A. Yes, sir, that's a picture of Mr. Connors holding Gateway.

13 Q. Okay. Is that what it looked like when you were there?

14 A. Yes, sir.

15 MR. CAIRNS: I move for admission of Government's
16 Exhibit Number 6.

17 THE COURT: Any objection, Counsel?

18 MR. ROBERT: No objection.

19 MR. SAMORE: I want to take a look at it before I waive
20 objection.

21 MR. CAIRNS: I did provide copies of all of my exhibits
22 to counsel, but in fairness, the copies of this are very hard
23 to see.

24 THE COURT: Any objection, Counsel?

25 MR. SAMORE: None, Judge.

1 THE COURT: Government's Exhibit 6 will be admitted.

2 Thank you.

3 (Government's Exhibit 6 admitted.)

4 MR. CAIRNS: I think that's all the questions I have at
5 this time of this witness.

6 THE COURT: Thank you. Cross examination. Mr. Robert,
7 do you want to go first?

8 CROSS EXAMINATION

9 BY MR. ROBERT:

10 Q. Agent, the dog, K-9 that you testified alerted to the
11 vehicle, do you know if Mr. Jones or Mr. Connors were present
12 at the time at which the dog was run on the car?

13 A. That, I can't recall, sir, directly. The dog was called in
14 immediately after we had searched the vehicle for bodies,
15 additional people in the vehicle, to include the trunk; but I
16 can't recall exactly the time frame, if both defendants were
17 still at the scene or not.

18 Q. Was there any kind of a -- I'm sorry, go ahead.

19 A. I don't think they were held at the scene very long. It
20 was a cold December night.

21 Q. Was there any time line between the time that the call was
22 made to the K-9 officer and the time of his arrival at the
23 scene?

24 A. It was a couple of minutes, sir. He was already staged
25 waiting for us as well.

1 Q. But you can't say for sure whether Mr. Jones was there when
2 this happened?

3 A. No, sir. I'm trying to recall. I don't remember if they
4 were still on the scene.

5 Q. Did you observe this process by which Agent Ronk ran the
6 dog on the car, or Officer Ronk?

7 A. I don't remember if it was Officer Ronk or not, but, yes,
8 sir, we were there still on the scene, myself and Mr. Fabian.

9 Q. You saw the dog?

10 A. We did see the dog.

11 Q. You saw the alert?

12 A. I'm not a trained K-9 officer, so I don't know what
13 indicates an alert for them. They work exclusively with the
14 dog and go through specific training, so I wouldn't be able to
15 tell you, sir.

16 Q. Were you present at the time at which the K-9 officer
17 indicated that there was an alert?

18 A. Yes, sir, and he was the one that told us the alert before
19 we searched.

20 MR. ROBERT: That's all, thank you.

21 THE COURT: Mr. Samore?

22 **CROSS EXAMINATION**

23 **BY MR. SAMORE:**

24 Q. Mr. Martin, as you understand it, your primary role, at
25 least in this hearing, is to tell us about the search of

1 1517-1/2 Gold.

2 A. That's correct, sir.

3 Q. All right. You did not interview my client in Gallup.

4 A. No, sir.

5 Q. All right. You did not follow the vehicle all the way to
6 Phoenix and all the way back.

7 A. No, sir.

8 Q. Now, your height and weight is approximately what?

9 A. I am six-four, approximately 215 pounds.

10 Q. That's approximately what it was the date you first met
11 Terry Connors?

12 A. Yes, sir.

13 Q. And you would agree Mr. Connors is significantly smaller.

14 A. Yes, sir.

15 Q. Didn't you and Terry Connors have a chat in an office in
16 Albuquerque before you went to his residence?

17 A. We did, sir.

18 Q. All right. Was that conference recorded?

19 A. No, sir.

20 Q. Why was that conference not recorded?

21 A. In our office, we are not -- by policy, we don't have to
22 record any interviews, anything like that. It's incumbent upon
23 the case agent whether they are going to record.

24 Q. Okay. That's not based on financial concerns or the cost
25 of running tape recording. It is just a decision the

1 individual agent can make?

2 A. No, sir, it is just not in our policy. It doesn't say
3 anywhere that we have to record.

4 Q. But I think we're not quite understanding the question. It
5 is not based on financial concerns or the cost of a recorder.
6 It is left up to the individual agent as to whether he or she
7 wishes to record?

8 A. I don't think that's a correct representation, sir. It is
9 not put in policy that it has to be done or it doesn't have to
10 be done. There is no policy that states that it has to be
11 recorded or not recorded.

12 Q. Have you ever recorded interrogations?

13 A. I have one or two.

14 Q. All right.

15 A. We merely do interviews of our defendants at the time. So
16 as you can see from my stature, I'm not going to state that it
17 is interrogation because that would be a show of force. I
18 don't do that. I normally, if I'm going to ask something, I
19 talk to them in a calm and respectful manner because it is
20 easier to gather information from them.

21 Q. Of course, that's the way you've been trained because a
22 calm, respectful manner is usually a good way to get people to
23 talk.

24 A. Yes, sir.

25 Q. You get better information?

1 A. I've found over the course of many years, yes, sir.

2 Q. It doesn't change that you're a big, imposing guy. The
3 point is you don't need that when you ask polite questions and
4 you're considerate of an individual?

5 A. It depends on the defendant. Some of them, of course, in
6 the type of work we do, we deal with street dealers, narcotics
7 dealers, who grow up in a gang environment who have no respect
8 for the law, so it just depends on the type of person that
9 you're interviewing at that time.

10 Q. That wouldn't apply in your chat with Mr. Connors?

11 A. No, Mr. Connors was respectful throughout my encounter with
12 him.

13 Q. How long did your conversation last with him in Albuquerque
14 before you went to his residence?

15 A. I would say it was probably over an hour, maybe, maybe 30
16 minutes, maybe an hour. I don't recall specific time frame.
17 But we did have a lengthy conversation.

18 Q. Did he make any admissions to you or statements about being
19 involved in distribution or possession of illegal drugs in that
20 time?

21 A. I don't recall any specific statements that he made. I
22 didn't -- like I said, I wasn't interviewing him at that point.
23 We were gathering information to see who was at the house, if
24 there was any further bodies at the house, what type of
25 evidence we would be collecting at the house, was my main

1 concern.

2 Q. Did you ride with him from Gallup to Albuquerque?

3 A. No, sir. He was transported by another agent. I drove the
4 rental vehicle back from Gallup.

5 Q. Now, I guess I'm concerned about another question is when
6 those handcuffs were taken off. Weren't those handcuffs taken
7 off before he returned to Albuquerque?

8 A. That, I wouldn't know, sir. I don't believe so. When we
9 transport prisoners -- in this case, I believe that he was put
10 into a caged vehicle and then transported back to Albuquerque.

11 Q. What is a caged vehicle?

12 A. A caged vehicle is normally a police vehicle with a cage in
13 between the driver and the passenger area, the back passenger
14 area. So that way, it ensures the safety of the officer
15 driving the subjects to the location.

16 Q. Would it also be practice and policy that Mr. Connors and
17 Mr. Jones were transported in separate vehicles?

18 A. There is a possibility, sir. I wasn't part of the
19 transport of the prisoners, so I wouldn't be able to tell you
20 what happened that day.

21 Q. So you first met him -- pardon me, did you first meet him
22 face to face in Albuquerque?

23 A. No, sir, the first meeting was in Gallup. I was actually
24 the agent who conducted the pat-down search of them after we
25 had them exit the vehicle.

1 Q. In the field?

2 A. Right.

3 Q. Okay. And from the time -- best estimate, because -- from
4 the time the vehicle was stopped until you arrived on scene was
5 approximately how long?

6 A. I'm sorry, I don't understand --

7 Q. It was just a few seconds, wasn't it? They stopped for
8 your vehicle. Isn't that correct?

9 A. That's correct. I was the passenger in the marked police
10 unit that conducted the traffic stop.

11 Q. And this felony stop was executed without having to go to
12 the car yourselves with guns drawn, but you had them get out
13 because you were using the intercom or whatever they call it.

14 A. We were using the PA system on the vehicle, yes.

15 Q. PA system. All right. Now, how long approximately was it
16 from the time of the stop until Mr. Connors and Mr. Jones were
17 taken away from the scene to Gallup?

18 A. It wasn't very long, probably over the course of maybe five
19 minutes.

20 Q. I'm going back -- I hope I'm not going to revisit more than
21 one question of Mr. Robert's or my colleague, Mr. Cairns. Was
22 the dog car on scene prior to our clients being removed from
23 the scene?

24 A. I don't recall, sir.

25 Q. Is it possible that dog car didn't even arrive with

1 Mr. Ronk until after they left the scene?

2 A. It's possible.

3 Q. Now, I'm going to turn to when you were discussing with my
4 client, chatting with my client, in Albuquerque. Is that the
5 first time you had been informed that he had concerns for his
6 dog at his apartment?

7 A. Yes.

8 Q. Didn't he say to you -- or pardon me, didn't you say to him
9 words -- pardon me, let me strike that and start the whole
10 question again. Normally, unless there was some extenuating
11 circumstances, you wouldn't just take a suspect to their home
12 to take care of their dog.

13 A. Correct, sir.

14 Q. In this case, you were wondering if there was drugs at the
15 residence. Weren't you?

16 A. He had informed us that he may still have some at the
17 house.

18 Q. And you were aware before he signed this consent, or at
19 least he stated that he had some drugs at the house, weren't
20 you?

21 A. Correct.

22 Q. Didn't he say to you words to this effect -- pardon me,
23 didn't you say to him words to this effect, that "if you sign
24 the consent, we can take you there," or "we can take you to
25 take care of your dog"?

1 A. I don't recall that statement being made, sir.

2 Q. When you say you don't recall, you might have said
3 something to that effect, and you might not have said it. Is
4 that correct?

5 A. That's correct.

6 Q. And after this statement was made, that's when he signed
7 this authorization?

8 A. I don't remember making that statement, sir. Basically, if
9 I was going to ask for consent on this, I would advise him that
10 it's voluntary. We already had a search warrant being drafted.
11 We would rather get consent, and I probably made a statement as
12 to if he still had keys on him, that would probably be a lot
13 easier than us breaking down the door, and he did advise us of
14 the concern towards his dog. And so my line of thinking, I
15 believe, at that time was that it would be easier for us,
16 instead of having to knock the door down, is to have him
17 consent and allow us entry into the house.

18 Q. He told you there was no one else living in that apartment,
19 didn't he?

20 A. He did, as I recall, but we don't always take the
21 defendant's word at that, so we have to ensure the safety of
22 our officers.

23 Q. Mr. Connors had been very agreeable throughout your
24 interviews, hadn't he?

25 A. In my encounter with him, yes, sir.

1 Q. And after this consent was signed, that's when he was taken
2 to the residence.

3 A. Correct.

4 Q. All right. Were you aware -- when were you first aware of
5 his criminal record or lack of any criminal record?

6 A. We were advised prior to the operation starting, we had a
7 briefing, and they advised -- they showed us pictures of the
8 suspect, Mr. Connors, at that time.

9 Q. Where did that briefing occur?

10 A. I believe it was done in Albuquerque. Prior to us
11 departing.

12 Q. Who was present at that briefing?

13 A. I could not tell you offhand, sir. I know that Agent Kepf
14 was the case agent on the scene, and I know she was the one
15 that provided the briefing information to us.

16 Q. Is it a pretty standard procedure, that before an operation
17 like this begins, the officers involved are informed regarding
18 the records?

19 A. That's correct.

20 Q. And that's a big factor in officer safety, isn't it?

21 A. Yes, sir.

22 Q. Someone that has a criminal record with some violence,
23 you're going to be extra zealous to protect your safety, aren't
24 you?

25 A. That's correct, sir.

1 Q. In this case, you didn't have that concern regarding these
2 gentlemen?

3 A. That's not correct, sir. We had information that
4 Mr. Connors possibly carried a firearm with him during his
5 transport of narcotics, and possibly had it during deals that
6 he had conducted previously.

7 Q. Okay. Other than that, that's the only information you
8 have regarding -- that would arouse officer concern?

9 A. Yes, sir, that was enough for us to go into a felony stop
10 as opposed to an approach-type stop where it is a traffic stop
11 for a minor violation.

12 Q. Is there any incriminating statements -- pardon me, yeah,
13 any incrementing statements other than that which you have
14 described today that my client made to you during the time that
15 you were interacting?

16 A. No, he had been previously mirandized, and my talking to
17 him was specific to evidence type of collection that we would
18 be anticipating upon completion of the search of his residence.

19 Q. Did you prepare any written report on your work on this
20 case?

21 A. Yes, sir, I did.

22 Q. Have you submitted that to the government?

23 A. It was provided to the case agent at that time who I
24 believe forwarded that to the appropriate attorneys.

25 MR. SAMORE: Thank you, sir. No further questions.

1 **REDIRECT EXAMINATION**

2 **BY MR. CAIRNS:**

3 Q. You were asked about sometimes recording statements or
4 interviews that are made by defendants and sometimes not.
5 Again, in your experience as a narcotics detective, if you
6 don't record, does that sometimes help facilitate the
7 statement?

8 A. Yes, sir. We normally will take notes or whatever as far
9 as our interview process is concerned, and those are assistive
10 in writing our reports later.

11 Q. I guess my point is, does the presence of a recording
12 device influence that individual's decision to make a statement
13 or not?

14 MR. SAMORE: Objection, leading and suggestive of a
15 response.

16 MR. CAIRNS: I don't think it is leading. It
17 doesn't -- in other words, it could be a yes or no --

18 THE COURT: Overruled.

19 Q. (By Mr. Cairns) You can answer the question.

20 A. Sometimes if the subjects know it is being recorded, they
21 do hesitate to even respond, or sometimes they won't do it
22 until we don't record.

23 MR. CAIRNS: That's all I have.

24 THE COURT: May this witness be permanently excused?

25 MR. CAIRNS: Yes, Your Honor. Yes, unless defense has

1 an objection.

2 MR. ROBERT: No objection.

3 MR. SAMORE: None, Judge.

4 THE COURT: Thank you.

5 All right. Counsel, I would propose that we continue.

6 It's getting close to the lunch hour.

7 Let me ask Mr. De La Rosa if he has any concerns with
8 that, if he's available.

9 MR. CAIRNS: We can probably push through. We have
10 just three more witnesses, two of them will be very short,
11 although one of them had to run an errand, so I want to make
12 sure she's available.

13 If you can check on her status.

14 Then we have -- I think these witnesses are going to go
15 very quickly.

16 THE COURT: Then we'll go ahead and continue, then.
17 Call your next witness.

18 MR. CAIRNS: If I could have just a minute for Ms. Kepf
19 to check on the status of one of the witnesses, and then we'll
20 move on.

21 United States calls Abbey Kepf.

22 THE COURT: Would you please raise your right hand.

23 **ABBIE KEPF,**

24 after having been duly sworn, testified as follows:

25

1 **DIRECT EXAMINATION**

2 **BY MR. CAIRNS:**

3 Q. Can you please state your name for the record.

4 A. Yes, it's Abbey, A-B-B-E-Y, Kepf, K-E-P-F.

5 Q. Where are you currently employed?

6 A. With Homeland Security Investigations.

7 Q. How long have you been with HSI?

8 A. Approximately three years.

9 Q. Are you also a member of this task force that we've
10 discussed here today?

11 A. That's correct. As a special agent, I'm assigned to the
12 Border Enforcement Security Task Force. Part of my
13 responsibilities, or the majority of my responsibilities, is an
14 assignment to Region II Narcotics Task Force which is located
15 in or near Farmington, New Mexico.

16 Q. Are you the case agent who is assigned to this case?

17 A. Yes, sir.

18 Q. How did you first get involved in the investigation?

19 A. Basically, the way the relationship is between Homeland
20 Security and Region II, they will contact me with various
21 information involving narcotics, mostly methamphetamine, in the
22 Four Corners region. We'll openly discuss information that
23 CI's are providing to them, information following arrests in
24 San Juan County.

25 During this investigation, information was brought to my

1 attention that Region II had secured a confidential source that
2 indicated they could facilitate a controlled purchase for a
3 large source of supply or a source of supply that was located
4 in or near Albuquerque. So we just went forward with that
5 information.

6 Q. Did you assist them and work with them in continuing the
7 investigation?

8 A. Yes, sir.

9 Q. So we'll go -- we won't go through that all over again.
10 You've been in the courtroom during the other examinations.
11 Were you aware of these other steps that were being taken by
12 Detective Verhulst and other agents?

13 A. Yes, sir.

14 Q. Now, are you aware, was there or was there not a warrant
15 issued by state judge for a tracking device?

16 A. Yes, sir.

17 Q. First of all, after the warrant was issued, what did you do
18 in response to that? Did you help in obtaining and installing
19 the tracking devices on Mr. Connors' vehicle, or did you
20 oversee that process?

21 A. Through surveillance and actually several days of working
22 intelligence and trying to identify who TC was, vehicles that
23 were being utilized to potentially smuggle or traffic items, we
24 obtained a tracking warrant for that vehicle. We utilized a
25 trafficking device, as I instructed both Region II agents and

1 other HSI agents, whoever was available at the time or who had
2 access to the vehicle, to go ahead and place a tracker on the
3 vehicle.

4 Q. Did they do so?

5 A. Yes, sir.

6 Q. What information did you receive from the tracking device,
7 you or other agents?

8 A. Well, we were initially expecting to obtain information
9 that the vehicle was going to be headed towards -- westbound
10 towards Phoenix. We actually received information otherwise,
11 that indicated that the vehicle was traveling to Sunport
12 airport. The vehicle traveled to Sunport, was there for a
13 period of time, and then returned back to the residence later
14 identified as belonging to Terrence Connors.

15 Q. And so based on that information, did you conduct an
16 investigation at the airport?

17 A. Yes, sir.

18 Q. What was that investigation?

19 A. We had a photo that had been identified through a photo
20 lineup utilizing the Region II CI that had had a positive ID on
21 who TC was, which was identified as Terrence Connors. I
22 printed that photo, and we walked from rental entity to rental
23 entity at Sunport and just said, "Have you seen this
24 individual? Do you know who this individual is?"

25 We ultimately -- of course, the very last rental place we

1 go to is Thrifty Rental, and they say, "Yes, we're aware of
2 this individual. His name is Terrence Connors. He rents a
3 vehicle from us frequently, averaging about every two weeks."
4 They pulled rental history showing he had rented the vehicle
5 with another individual, Mr. Jones, and that Mr. Jones was
6 listed as a secondary driver on the rental vehicle.

7 Q. Okay. So is the vehicle that had the tracking device on,
8 is that vehicle out in the parking lot someplace?

9 A. No, it's not.

10 Q. When he rents the other vehicle, what does he do with his
11 own vehicle?

12 A. I suspect that somebody went with him -- the information
13 that was provided to me led me to believe because Mr. Jones was
14 listed as a secondary driver on the vehicle that Mr. Jones
15 traveled with Mr. Connors to Sunport, and then upon leaving
16 Sunport, securing the rental vehicle, one of them drove the
17 rental vehicle, and one of them drove Mr. Connors' vehicle, the
18 vehicle with the tracking device, back to Mr. Connors'
19 residence.

20 Q. Okay. On the rental vehicle itself, you don't have -- was
21 there a tracking device installed on that vehicle?

22 A. No, sir.

23 Q. But did you have another way to know in very general where
24 Mr. Connors was at any given time?

25 A. Yes. That was through a GPS tracking device that was on

1 his cell phone. We call it a ping location.

2 Q. Was that also issued by a state district judge?

3 A. Yes, sir.

4 Q. So based on that information from these GPS pings, what
5 were you able to learn about Mr. Connors' -- did he take a trip
6 somewhere?

7 A. Yes, sir, he traveled westbound from Albuquerque in or near
8 the Phoenix, Arizona area, and then he traveled back towards
9 the State of New Mexico where we encountered him in or near
10 Gallup, New Mexico.

11 Q. Did you participate also in that traffic stop?

12 A. Yes, sir.

13 Q. And again, with regard to the testimony that you have
14 already heard, was the testimony that you have heard about what
15 happened during that traffic stop, was it accurate based on
16 your own memory?

17 A. I'm sorry, could you rephrase that?

18 Q. Yes, ma'am, I'm sorry. Based on the testimony that you
19 have heard in this courtroom from other agents and officers, is
20 how they described that traffic stop accurate based on your own
21 memory?

22 A. Yes, sir.

23 Q. Now, after the traffic stop, what did you do then? What
24 was your role in the investigation after the stop and after
25 Jones and Connors had been taken into custody?

1 A. Well, I assisted in at least initially on -- basically, the
2 way that it was outlined, I think there was some confusion as
3 to how this all transpired. But basically, we had Region II
4 agents and had Homeland Security agents. We had approximately
5 five or six Homeland Security agents, and Region II's task
6 force is approximately 10 agents. We were able to communicate
7 through cell phone and radio communication. Region II agents
8 were set up in vehicles every few miles along the I-40 stretch
9 between the Arizona border and the New Mexico border there,
10 trying to get eyes on the vehicle that had been described to us
11 from Thrifty Rental Car as the vehicle being driven or rented
12 by Mr. Connors and/or Mr. Jones.

13 That vehicle, because we did not have a tracking device on
14 that vehicle, we only had the GPS ping location, we didn't have
15 a whole lot of accuracy of where that vehicle would be, so we
16 had agents set up to keep an eye out for the vehicle.

17 Those agents then reported to me as well as to the
18 Region II commanding officers that they had identified the
19 vehicle that they believed to be driven by Connors and/or
20 Mr. Jones. That vehicle, as it was traveling back from the
21 Phoenix area, traveled from Arizona to New Mexico, that vehicle
22 was stopped at about mile 22 marker in New Mexico near Gallup.

23 We had a marked unit because we were concerned for officer
24 safety, and it's a little different because Region II is
25 comprised of marked units and unmarked units. Our units that

1 we were utilizing for the most part were unmarked units, so we
2 had a marked unit with a PA system for officer safety, because
3 oftentimes in narcotics, or at least lately in narcotics
4 transactions, there is a concern that if someone is traveling
5 with large quantities of expensive drugs that they may be
6 ripped off, and so we wanted to make sure that there was a
7 marked unit so that the drivers of the vehicle or those that
8 were in the vehicle knew that we were in fact police.

9 Agent Martin and Pete Fabian were in the marked unit. Pete
10 Fabian was calling out commands to the driver, and then to the
11 passenger. As the driver is walking back, weapons are drawn
12 until they are in a position where we do not have to point
13 weapons at them, and then they are placed into handcuffs. As
14 they are being placed into handcuffs, they are sort of being
15 passed back towards a secure area where they are then patted
16 down for officer safety.

17 So my role was to sort of oversee this, participate and/or
18 oversee them, and then subsequently, when they are both secure,
19 then I facilitated their transportation. I had an agent
20 transport Mr. Connors and an agent transport Mr. Jones to a
21 nearby station, police station, where we then can interview
22 them.

23 Q. Where was that police station?

24 A. It was around Gallup, in or near Gallup.

25 Q. So did you participate in that interview?

1 A. Yes, sir.

2 Q. All right. How many other agents were present at the
3 beginning of the interview with you?

4 A. I interviewed Mr. Connors, and there was one other agent
5 that was initially present during the interview, Christine
6 Brital.

7 Q. Did you read Mr. Connors his Miranda rights before you
8 conducted the interview?

9 A. Yes, sir.

10 Q. Did he acknowledge his understanding of those rights and
11 his willingness to talk?

12 A. Yes, sir.

13 Q. In fact, you have a copy of the Miranda warning.

14 MR. CAIRNS: I'm handing the witness what is marked as
15 Government's Exhibit Number 2.

16 Q. (By Mr. Cairns) Can you tell me what that is?

17 A. This is a copy of the Miranda cards that we read, we
18 usually keep these in our credentials. It is a standard
19 warning we read to anybody prior to interviewing them.

20 Q. Does this copy actually bear some signatures, and is yours
21 one of those signatures?

22 A. Yes, sir.

23 Q. Is this the copy -- is this the Miranda warning that you
24 provided to Mr. Connors?

25 A. Yes. My recollection is actually he was read his Miranda

1 rights twice. I read him his rights, and then we went and
2 photocopied the card, read them and initialed. I recall two
3 Miranda warnings.

4 MR. CAIRNS: I move for the admission of Government's
5 Exhibit Number 2.

6 THE COURT: Any objection, Counsel?

7 MR. SAMORE: None, Judge.

8 MR. ROBERT: No, Judge.

9 THE COURT: Exhibit 2 will be admitted. Thank you.

10 (Government's Exhibit 2 admitted.)

11 Q. (By Mr. Cairns) Did Mr. Connors actually sign this copy of
12 the Miranda warning acknowledging the fact that he had been
13 advised of those rights and was going to talk?

14 A. Yes, sir.

15 Q. Did you also sign?

16 A. Yes, sir.

17 Q. And did Christine Brital also sign?

18 A. Yes, sir.

19 Q. When does this indicate those signatures were placed on
20 this document?

21 A. It is my handwriting, and it is dated 12/17/2012 at 11:34.

22 Q. All right. Did you subsequently take a statement from
23 Mr. Connors?

24 A. Yes, sir.

25 Q. Did he make admissions regarding the methamphetamine that

1 was found in the vehicle and the firearm?

2 A. Yes, he did.

3 MR. CAIRNS: That's all the questions I have of this
4 witness.

5 THE COURT: Cross examination.

6 **CROSS EXAMINATION**

7 **BY MR. SAMORE:**

8 Q. Ms. Kepf, I'm going to begin by asking some questions about
9 your role in this case and about your background.

10 A. Yes, sir.

11 Q. Thank you. Now, were you present in this case at the stop
12 in the field?

13 THE COURT: Counsel, she's already answered those
14 questions. I don't want you to ask her questions that she's
15 answered in the interest of time.

16 Q. (By Mr. Samore) Here is how I'll approach it, then. You
17 were authorized to carry a weapon.

18 A. Yes, sir.

19 Q. Tell me in a summary version your prior law enforcement
20 experience.

21 A. Prior to working with Homeland Security?

22 Q. Yes.

23 A. I also worked as a criminal investigator with the
24 department of -- United States Department of Labor Office of
25 Labor Management Standards. I was employed there for

1 approximately six years.

2 Q. Six years?

3 A. Six years.

4 MR. SAMORE: Judge, may I have permission to grab a
5 sheet off my desk?

6 THE COURT: Sure.

7 MR. SAMORE: Thank you.

8 Q. (By Mr. Samore) Now, have you throughout that time period,
9 the six years when you were a criminal investigator, and your
10 time with Homeland Security, studied and practiced various
11 interrogation or interview techniques?

12 A. Yes, sir.

13 Q. Have you ever gone to one of the FBI programs?

14 A. No, sir.

15 Q. Have you ever gone to one of the Reid programs?

16 A. I believe Reid made a presentation within the Federal Law
17 Enforcement Training Center, but in terms of anything
18 independent of the required training at FLETC, no, I have not.

19 Q. But within -- I mean, you recognize the term first of all,
20 the Reid Training Program, R-E-I-D?

21 A. Yes, sir.

22 Q. And that's pretty widely respected as an interview
23 technique, isn't it?

24 A. Yes, sir.

25 Q. You have incorporated into your techniques when you

1 interview with someone various aspects of your training that
2 you feel is effective.

3 A. Yes, sir.

4 Q. All right. We can agree that it is -- you are trained, and
5 you would agree that an admission can be a pretty powerful bit
6 of evidence when you're investigating and trying to establish
7 criminal responsibility.

8 A. Yes, sir.

9 Q. Now, from the case that we have here today, I'm going to
10 ask you some questions about your interaction with my client,
11 Mr. Connors. You didn't know him before this date.

12 A. No, sir.

13 Q. All right. And when you interviewed him, do you remember
14 where you were at the Gallup station?

15 A. We were in just a room, an unmarked room.

16 Q. The door was closed?

17 A. The door had been open and closed. It was back and forth.

18 Q. Where was Mr. Connors seated, if he was sitting?

19 A. He was sitting at a table within the room.

20 Q. And were you present with, I think, another officer in this
21 case? You were present with -- was it Ms. Brital?

22 A. Christine Brital, yes.

23 Q. And she was with you?

24 A. Yes.

25 Q. How big was the room foot-wise?

1 A. I would say it was maybe 12 feet by eight feet.

2 Q. So a relatively small room.

3 A. Yes, sir.

4 Q. All right. And was there a table in the room?

5 A. Yes, it's pushed back from the corner.

6 Q. Okay. And the door is behind where Mr. Connors was seated,
7 isn't it?

8 A. Yes, sir.

9 Q. That's one of the techniques you've been taught, is always
10 sit the person that's being interviewed with his or her back to
11 the door.

12 A. No, I have not been taught that.

13 Q. Is it a practice that you have found effective?

14 A. I position myself for interviewing where I can speak with
15 the person directly, if I'm interviewing them, or if I'm in the
16 interview, that I can read their body mannerisms. I put them
17 in a position where I'm also concerned for my safety as a
18 female, as a petite female, so I don't want to be too close to
19 them, but I don't want to give them any sort of room where they
20 can be physical or harm me.

21 Q. You were with another officer at the time?

22 A. Yes, sir.

23 Q. And what is the qualifications that Ms. Brital has as an
24 officer? In other words, is she also Homeland Security
25 officer?

1 A. Yes, sir, she's a special agent with the Homeland Security.

2 Q. She's also authorized to be armed?

3 A. Yes, sir.

4 Q. And both of you were armed when you are sitting down with
5 Mr. Connors?

6 A. No, sir.

7 Q. Neither one of you has a weapon?

8 A. I don't know if Ms. Brital had her firearm on her, but
9 basically, initially from the stop, we were in what we would
10 call tactical gear, so we had protective vests, we had our
11 firearms, and upon interviewing, it was cold, we took our -- at
12 least I took my firearms off, secured them outside of the
13 interview room, left my vest and everything, just because it
14 was comfortable.

15 Q. Did you sit Mr. Connors between the two of you?

16 A. No, sir.

17 Q. Where was Mr. Connors seated relative to you and
18 Ms. Brital?

19 A. He was sitting near the table. We provided him with some
20 water and some coffee.

21 Q. Okay.

22 A. And myself, I was sort of catty-corner to him, and then
23 Christine was to my right.

24 Q. And Terry Connors is seated between the two of you?

25 A. Yes, I guess. A bit further away from us, yes, sir, I'm

1 sorry.

2 Q. But I'm a little familiar with this technique. You've got
3 each officer on one side, and a subject is in the middle. All
4 right? So we can agree on that.

5 A. Yes, sir.

6 Q. That's how it was on the date the late evening, I guess it
7 is --

8 A. Yes, sir.

9 Q. -- and early morning hours, perhaps, of December 17 and
10 18th.

11 Now, did you have any written material with you?

12 A. I don't understand that question.

13 Q. Did you have a notebook, or did you take notes of the
14 interview?

15 A. Yes, sir.

16 Q. Did your colleague, Ms. Brital, take any notes?

17 A. Not that I recall.

18 Q. All right. Is that a practice and a standard which you
19 have either been trained in, or you've come to practice, where
20 when you have two officers conducting an interview, only one of
21 them takes notes?

22 A. I understand that question, and, no, at least it is not
23 within policy. I've seen it done both ways. My Department of
24 Labor, both people have taken notes. Other interviews, only
25 one person takes notes. Sometimes they combine the notes. But

1 in terms of me taking notes that day and Christine not taking
2 notes that day, it was not because of that tactic or technique.

3 Q. That is a tactic practiced, or technique -- you used the
4 word "technique." That is a technique of some of your
5 colleagues, isn't it, to have only one of the two officers
6 taking notes?

7 A. I've never had an open discussion with anybody about that,
8 but my observations, I've seen both parties taking notes or one
9 person taking notes.

10 Q. There is no question my client was in custody when he was
11 speaking to each of you.

12 A. That's correct.

13 Q. There is no question that before any -- as you understand
14 the law, before anything he said could be admitted, that he has
15 to knowingly and voluntarily waive his right to remain silent
16 and the other rights described in the Miranda warnings.

17 A. Yes, sir.

18 Q. Okay. Now, do you recall if Mr. Connors ever read the card
19 you claimed to have given him? Did he ever read it silently?

20 A. I remember him reading it. I remember him verbally
21 listening to it, and then I remember him taking some time to
22 look at it, and -- yes, I believe he read it.

23 Q. You believe that he read it while you were reading it or
24 how did -- I'm trying to understand if you're reading off a
25 paper, or are you reading off a card at the time you are giving

1 him his Miranda warning?

2 A. Both. So initially, we read -- I read the card to him.
3 Typically, what we like to do is we like to have -- it's a
4 standard HSI Miranda form where it has our logo, and we have
5 the individual sign it and date it. Basically, it is saying,
6 "Yes, I've been mirandized." Because we were out in the field
7 and we were away from our office, I didn't have that form, but
8 I wanted to document the fact that we were providing both
9 Mr. Connors and Mr. Jones their Miranda. So I read them a
10 card, and then we had asked one of the agents to make copies of
11 the cards so that then I could be brought back with that piece
12 of paper, re-mirandize them and ask them to sign it and initial
13 it if he understood and waived those rights.

14 Q. So they bring you back one copy of the Miranda.

15 A. Yes, sir.

16 Q. You read it again, as you recall.

17 A. Yes, sir.

18 Q. And then you hand it to him for him to sign?

19 A. Yes, sir.

20 Q. All right. Did your colleague, Ms. Brital, make any --
21 read any of these, as you recall, read the Miranda at all to
22 him?

23 A. I don't recall.

24 Q. Did you ever -- do you recall if at any time you read the
25 Miranda warnings, or the equivalent, at a later point in the

1 interview?

2 A. No, sir, it was prior to us interviewing Mr. Connors.

3 Q. How long did the interview last, as you recall it?

4 A. The interview with -- I guess when he's making admissions
5 and telling us specifically what was going on, I would say it
6 was probably about an hour and a half. And then we traveled
7 back to Albuquerque, and while in Albuquerque, we were going
8 through paperwork, and he's freely speaking with myself and
9 Agent Martin.

10 Q. Were you taking any notes of the trip back to Albuquerque?

11 A. I did not transport him back to Albuquerque. It is my
12 understanding that they were transported in a vehicle that
13 Agent Martin had described, a caged vehicle. And that they had
14 slept the way back.

15 Q. If this case were to go to trial, your testimony would be
16 entirely regarding statements my client is alleged to have made
17 when he was speaking to you in Gallup at the station.

18 A. Yes, sir.

19 Q. Now, you've been present throughout the hearing this
20 morning.

21 A. Yes, sir.

22 Q. You heard Officer Martin testify.

23 A. Yes, sir.

24 Q. Now, when you were interviewing my client late on December
25 17, who was asking the questions as far as you or Ms. Brital?

1 In other words, was one of you an observer and the other
2 listening?

3 A. I was doing the majority of the -- I was doing the majority
4 of the interview in terms of asking questions. If there was a
5 question that Agent Brital wanted to have answered, she was
6 more than welcome to ask additional questions. Then later,
7 Agent Verhulst was also in the room sort of at the end of the
8 interview.

9 Q. Now, the only way we'll know exactly what Mr. Martin and my
10 client discussed as he was describing it in his portion of the
11 testimony, the only way we would know is if we had a recording,
12 wouldn't it?

13 A. No, sir, I was present for that.

14 Q. You were present for my client's statements to Mr. Martin
15 back in Albuquerque?

16 A. Yes, sir.

17 Q. I thought my earlier question --

18 A. I'm sorry, I must have misunderstood.

19 Q. I apologize if I didn't make that clear. You also might be
20 able to testify regarding Mr. Martin and his interview with my
21 client regarding the eventual search of my client's apartment?

22 A. Yes, sir.

23 Q. All right. But the only way we're going to know who asked
24 what question, really, and remember it exactly and what words
25 were used, would be if we had a recording.

1 A. Yes, sir.

2 Q. Okay. And of course, as Mr. Martin said no recording was
3 made of his interview.

4 A. That's correct.

5 Q. And -- I'm going to ask you the same question. Was any
6 recording made of the interview you had with Ms. Brital my
7 client in Gallup?

8 A. No, sir.

9 Q. All right. And that's just a matter of policy, apparently.

10 A. As far as I'm aware as an agent when I'm conducting federal
11 investigations, I don't know of a mandate or court decision
12 that would suggest that that's what we need to do when we're
13 conducting our interviews. I take notes so that I can reflect
14 on what is told to me, but I'm not aware of any policy asking
15 that I record interviews of individuals. I believe that my
16 reports and my note-taking are accurate.

17 Q. Well, good. We're going to talk about your notes a little
18 bit this afternoon. I think it's good, very interesting. I'm
19 glad you mentioned that you're not aware of any court mandates.
20 You are aware that the judge in this case as recently, as three
21 days ago, issued a ruling where she encouraged the FBI to
22 record their interrogations.

23 A. I am not aware of that, sir.

24 Q. Let me ask you -- I'm going to give you a quote from a
25 footnote, and see if you agree with this footnote.

1 THE COURT: Counsel, I would ask that you move on. I
2 don't think that's relevant.

3 MR. SAMORE: Judge, I don't want to argue -- there is
4 no objection.

5 THE COURT: What is the relevance, sir? I think we
6 have an attorney standing up, so --

7 MR. CAIRNS: That's Judge Armijo's opinion in a
8 different case. I have no knowledge as to the facts of that
9 case, whether they are different or similar to the facts of
10 this case. To ask an agent to opine as to a judge's opinion, I
11 think is incorrect. Again, it is not -- he's not even
12 eliciting fact testimony from the witness. He's eliciting
13 opinion testimony which is the realm -- the province of an
14 expert witness, not a lay witness.

15 THE COURT: And I don't understand the relevance of a
16 Judge Armijo opinion that she did in another case three days
17 ago.

18 MR. SAMORE: Judge, the witness brought it up here in
19 answer to my question.

20 THE COURT: What did she bring out?

21 MR. SAMORE: She said "I'm not aware of any opinion" --
22 I would defer to the gentleman's record -- "any opinion that
23 was to the effect of a judge saying that we should record these
24 statements," and here is a quote from the FBI standard in a
25 footnote, and also the judge's opinion.

1 THE COURT: She's just answered she's not aware of it,
2 so what is the relevance, Counsel?

3 MR. SAMORE: Okay. I think the opinion issue came up.
4 I'm going to ask about whether it was recorded for accuracy.
5 And I was --

6 THE COURT: You asked that, Counsel.

7 MR. SAMORE: All right. I hear what you say, Judge.

8 Q. (By Mr. Samore) Prior to my client making any statement to
9 you regarding the substance that we find in your report where
10 he's apparently making incriminating admissions, did you have
11 any discussion or have any other chat with him about his
12 predicament?

13 A. Could you clarify?

14 Q. Sure. Did you have any other conversation with him prior
15 to any admissions that he made?

16 A. No, sir.

17 Q. So your testimony is that right when you sat down, you
18 didn't discuss things like we would like to hear your side of
19 the story, or we'd like to talk to you today? We'd like to
20 know what happened. We'd like to say something good about you
21 to the prosecutors. Anything to that effect?

22 A. The only statements that I remember being exchanged is him
23 asking, "Why am I here? What's going on?" And so we said,
24 "We're going to place you in this room, and we will provide you
25 with an explanation as to why you're here in just a few

1 moments."

2 In terms of any conversation after that or him speaking to
3 us, if you're alluding to whether it was before Miranda, no,
4 there were no statements that he had provided prior to him
5 being mirandized.

6 Q. You described today your confidence in your note-taking.

7 A. Yes, sir.

8 Q. Did you provide Mr. Connors a pen and paper so he could
9 take some notes of the conversation?

10 A. No, sir. He didn't ask for it.

11 Q. So the only notes and the only record we have of this
12 conversation lacking a recording is your notes and your
13 recollection.

14 A. Yes, sir.

15 Q. And the parties' recollection, Ms. Brital's and my
16 client's.

17 A. Yes, sir.

18 Q. Now, I am going to ask you -- because I think it's relevant
19 to what my client may testify to if we call him later. With
20 the court's indulgence, I'm going to ask you a couple of
21 questions about the notes that you have relative to the report
22 because it relates to our motion. So I'm trying to let you
23 know where I'm going with that.

24 A. Yes, sir.

25 MR. SAMORE: I have made a copy of pages 18 to 28 of

1 discovery that is this agent's notes. May I approach and
2 present it to her?

3 THE COURT: You may, yes.

4 Q. (By Mr. Samore) Does that appear to be your notes?

5 A. Yes, sir.

6 Q. I think I'm going to warn you, because I've had a chance to
7 go through them in preparation for today, I think a couple of
8 pages are repeated, but I'm going to make some references
9 probably to those reports as I wrap up my cross examination,
10 ma'am.

11 A. Yes, sir.

12 Q. Those notes that you have were taken the date of the
13 interview with my client.

14 A. Yes, sir.

15 Q. All right. And those notes were provided from you to the
16 government, and they haven't been amended by anything after
17 that interview.

18 A. No, sir.

19 Q. Did you take any notes during your time sitting with my
20 client and Mr. Martin?

21 A. No, sir.

22 Q. Now, we have also a report that was details of the
23 investigation that was found in discovery pages 14 to 16.
24 That's typed. That was yours, too, wasn't it?

25 A. I believe so, yes.

1 MR. SAMORE: May I give the witness a copy, Judge?

2 THE COURT: Yes, sir, certainly.

3 MR. SAMORE: May I approach, Judge?

4 THE COURT: You may.

5 Q. (By Mr. Samore) Now, for purposes of, I think, this
6 examination, I don't need to offer these as exhibits, but I am
7 going to ask you to read from those, and if my colleague or the
8 court wants me to identify them, I will not have them marked as
9 exhibits, but it is more as refreshment.

10 What I have provided to you, please confirm that we have
11 the same copies as pages 14 to 16 of discovery that's the
12 report, and 18 to 28 that's your notes. Am I correct?

13 A. No, sir. The report that I have in here, the topic is
14 "Arrest of Terrence Connors and Thomas Jones," and the
15 signature and the typist is Special Agent Martin.

16 Q. Oh, okay. That's 14 to 16 is Mr. Martin's.

17 A. Yes, sir. Assuming that your 14 -- I don't have an exhibit
18 number on this, so --

19 Q. Yes, we have the same, lower right-hand corner is 14.

20 A. I don't think I have the same as you, I'm sorry, sir.

21 MR. SAMORE: May I approach, Judge, make sure we have
22 the same copy? May I approach?

23 THE COURT: You may.

24 Q. (By Mr. Samore) I think I have the pages now. I'm sorry.
25 Do we have the right pages now, I hope?

1 A. Yes, sir.

2 Q. Okay. Thank you. How long a drive was it, if you recall,
3 from the time you left the field, which was one of my initial
4 questions, until you got back to the station?

5 A. Probably about 20 minutes.

6 Q. From that to Gallup, from the field to the Gallup station
7 where you interviewed my client?

8 A. Yeah, I would say that's about accurate.

9 Q. Did you leave at the same time my client left the field, or
10 did you leave at a later time?

11 A. I think we sort of all left together. There were some
12 agents that I instructed to stay behind to secure the vehicle
13 and move forward with the K-9 aspect and search of the vehicle,
14 and then there were agents that I asked to assist in
15 transporting Mr. Jones and Mr. Connors to the nearby station.

16 Q. Had Officer Ronk and the dog car arrived in the field
17 before you left the field site to go back and start the
18 interview with my client?

19 A. No, sir. There were concerns of the K-9 Unit was a
20 Farmington unit, and so I had asked to wait to have the
21 Farmington marked unit arrive after Mr. Connors and Mr. Jones
22 had already left the scene.

23 Q. When you went to the room to interview my client, was he
24 already present in the room at the station, or did you go first
25 and wait for him?

1 A. I don't remember. It was sort of all at the same time.

2 Q. Do you know where he had been held from the time he arrived
3 at the station until the time he arrived in the room to be
4 interviewed?

5 A. I don't believe that he was held -- he was transported in a
6 vehicle, and upon exiting the vehicle, he was escorted into the
7 interview room.

8 Q. I think in light of your testimony, I'm going to make my
9 questions very limited about a reference -- references that I
10 find comparing your report, 14 to 16, to the notes. My
11 preliminary question is, aren't you trained to put in your
12 report as many things of significance as you can recall or as
13 occur in an interview?

14 A. That's the hope, yes, between the report and the notes.

15 Q. And if you don't have it in the report, it should probably
16 be in the notes. Wouldn't that be a fair conclusion? Because
17 you have said your notes are pretty accurate.

18 A. Yes, or through recollection.

19 Q. Well, when you're writing your notes, aren't you trying to
20 write down everything of importance that you hear from the --

21 A. Yes, sir.

22 Q. -- witness, or whomever, or the suspect, or in this case
23 the person in custody?

24 Here is the direction I'm going on my final couple of
25 questions. I see references in the report that are confirmed

1 in the notes for virtually everything that you have described
2 in the report. The one thing I can't find is the bottom of
3 page 15 and the top of page 16, I can find no reference to the
4 sentence that begins -- this is on page 15, "Connors also
5 stated," and through that paragraph, the last three words being
6 "in a parking lot." I can find no reference to that anywhere
7 in any of the notes, and I ask you if you can see a reference
8 to it that I missed.

9 A. If the statement or -- if it's not in the notes, it is
10 something that I felt I needed to put in the report based on my
11 recollection of the interview.

12 Q. There is not -- it is not a trick question. I'm just
13 saying maybe I missed it. And if the court will indulge us
14 just a minute or two so you can glance through and see if you
15 can pick it up.

16 A. With reference to the scales, he also stated that he keeps
17 ammunition, magazines, digital scales, baggies, pipes in his
18 residence, I believe it's page 24 of my notes. I listed the
19 firearms he told me that he had, the ammunition, the scale, the
20 baggies, the pipes.

21 Q. This reference here at the bottom of 15 that says "all are
22 within close proximity to where he keeps the methamphetamine,"
23 is that your conclusion, or is that his words?

24 A. Yes, he said he lives in a very small space, and all of it
25 was within close proximity to where he was keeping his

1 methamphetamine, yes.

2 Q. Is there any reference in the notes that says, "Connors
3 typically deals methamphetamine out of his residence or at a
4 nearby parking lot," or is that your conclusion from --

5 A. If it is in my report as a statement, it would have been
6 something that he told me.

7 Q. But you don't see that sentence quoted anywhere in these
8 rather detailed notes that you took.

9 A. Not that I see, no.

10 Q. And we do -- as the case agent, you're well aware that we
11 have at least two other recordings of various aspects of this
12 case that were played to the court this morning.

13 A. Yes, sir.

14 Q. Okay. The decision not to record that interview or the
15 Miranda warning is a decision that you make as a case agent,
16 isn't it?

17 A. Yes, sir.

18 MR. SAMORE: Thank you very much. Pass for cross
19 examination.

20 THE COURT: Mr. Samore, the way that I do these
21 hearings is after the conclusion of the evidence, when the
22 transcript is ready, I ask the lawyers to do findings and
23 conclusions, and you're welcome to state Judge Armijo's opinion
24 as a legal conclusion.

25 MR. SAMORE: Very good, Judge, thank you. For the

1 record, again, I don't think it's necessary to reference those
2 notes, unless the court feels it would support, I will conclude
3 my examination, thank you.

4 THE COURT: Mr. Robert.

5 MR. ROBERT: Thank you, Your Honor.

6 CROSS EXAMINATION

7 BY MR. ROBERT:

8 Q. Agent Kepf, you hadn't heard of Mr. Jones prior to the 17th
9 of December of last year, have you?

10 A. No, sir.

11 Q. His name hadn't come up in your preliminary work on the
12 investigation of Mr. Connors?

13 A. No, sir.

14 Q. And during the course of the investigation, you learned
15 that all he got out of this was, every time he drove, he got an
16 eight ball, three-and-a-half grams of meth?

17 A. Yes, sir.

18 Q. Money?

19 A. Not that I was aware of.

20 Q. You testified a little bit ago that -- I'm not quite sure I
21 understand, but that you had requested that the Farmington K-9
22 officer not come to the scene until you had left with
23 Mr. Connors and Mr. Jones?

24 A. Yes, sir.

25 Q. So at the time at which the dog arrived, neither of them

1 were present.

2 A. That's correct.

3 Q. And you had already left the scene at that point to go
4 participate in the interrogation of Mr. Connors.

5 A. In his interview, yes.

6 Q. You were not present, then, when the dog was run on the
7 car?

8 A. No, sir.

9 Q. You weren't present at the time at which, according to
10 Officer Ronk, the dog alerted onto parts of the vehicle?

11 A. I was not present.

12 Q. And yet when you were involved in the interrogation of
13 Mr. Connors, you were aware that there was a significant
14 quantity of methamphetamine was found in the car.

15 A. Yes, sir.

16 Q. And you left before the dog had done his work.

17 A. That's correct.

18 Q. Would you explain that for us?

19 A. Upon the search of the vehicle, the agents drove the
20 vehicle and brought back to the police station the
21 methamphetamine, the contents that were found in the vehicle.

22 Q. Is it your testimony that -- first, is it your testimony
23 that that occurred prior to your beginning the interrogation of
24 Mr. Connors?

25 A. No, sir. I believe it to have taken place all at the same

1 time.

2 Q. How did that information come to you in terms of physical
3 logistics as you were involved in discussing things with
4 Mr. Connors?

5 A. Mr. Connors was placed in the interview room. We were
6 asking background information, where he was traveling to, where
7 he was coming from, what sort of employment he had, those types
8 of questions. And then agents are either calling me or
9 notifying other agents that are already at the police station
10 would be on scene, and then once the vehicle was searched on
11 the side of the road, they drive the vehicle to the substation,
12 and anything that they found in the vehicle relevant to us
13 asking questions was then brought in and brought to our
14 attention.

15 Q. Your testimony to the court, then, today is that, at the
16 time at which you left the scene to go back to the substation
17 to conduct this interview, you didn't know what they found in
18 the car?

19 A. That's correct.

20 Q. All right. Were you present during the interview of
21 Mr. Jones?

22 A. No, sir.

23 Q. All right.

24 MR. ROBERT: That's all.

25 THE COURT: Redirect.

1 MR. SAMORE: Judge, may I ask one question?

2 THE COURT: One. You can ask one.

3 CROSS EXAMINATION (Continued)

4 BY MR. SAMORE:

5 Q. Based on your recollection, from the time Mr. Connors
6 signed the Miranda copy that was introduced into evidence until
7 the last admission that you feel he made in your notes and in
8 your report, how much time passed?

9 A. My interview, my note interview, or the notes that I have,
10 were with reference to the interview that took place in Gallup,
11 so I would venture to say that that interview lasted
12 approximately an hour and a half.

13 MR. SAMORE: That's it.

14 THE COURT: Thank you. Redirect.

15 REDIRECT EXAMINATION

16 BY MR. CAIRNS:

17 Q. During these interviews, whether you record or do not
18 record, is it custom to have two agents present during the
19 interview?

20 A. Yes, sir.

21 Q. In fact, is that HSI policy?

22 A. Yes, sir.

23 Q. And is that to ensure that the interview is accurately
24 recorded?

25 A. Yes, sir.

1 MR. CAIRNS: That's all the questions I have.

2 THE COURT: Thank you. You may step down.

3 Is your next witness available, Counsel?

4 MR. CAIRNS: The government calls Homeland Security
5 Investigations Agent Christine Brital.

6 THE COURT: Would you please raise your right hand?

7 **CHRISTINE BRITAL,**

8 after having been duly sworn, testified as follows:

9 **DIRECT EXAMINATION**

10 **BY MR. CAIRNS:**

11 Q. Please state your name for the record.

12 A. Christine Brital, B-R-I-T-A-L.

13 Q. Where are you currently employed?

14 A. I'm a special agent with the Department of Homeland
15 Security.

16 Q. Were you present on December 17, 2012, when Defendant
17 Connors was interviewed by Agent Kepf?

18 A. I was.

19 Q. Did you or Agent Kepf explain to Mr. Connors his Miranda
20 warning prior to the interview taking place?

21 A. Yes.

22 Q. I'm going to hand you what's been marked and admitted as
23 Government's Exhibit 2. Is that the photocopy of the Miranda
24 warning that was provided to Mr. Connors?

25 A. Yes, sir.

1 Q. Was that also explained to him verbally prior to that?

2 A. Yes.

3 Q. Is that your signature as well on this document?

4 A. Yes.

5 Q. And does that signature indicate that this warning was
6 provided to Mr. Connors?

7 A. That I witnessed it, yes.

8 MR. CAIRNS: That is all the questions I have.

9 THE COURT: All right. Cross examination.

10 **CROSS EXAMINATION**

11 **BY MR. SAMORE:**

12 Q. Prior to testifying today, what documents, notes, reports,
13 have you reviewed to prepare to testify?

14 A. I read the report, I believe number 2 and number 3, that
15 are part of this case file, which number 2, I believe was the
16 stop, number 3 was the interview of Mr. Connors.

17 Q. Excuse me, was that the interview by you and Agent Kepf at
18 the Gallup station?

19 A. Yes, sir.

20 Q. Okay.

21 A. We've talked in a group prior to this hearing. I believe
22 that's pretty much it.

23 Q. Did you review Agent Kepf's notes?

24 A. I did. I did. I'm sorry.

25 Q. Do you have any recollection of the interview of my client

1 other than what was found in those notes or found in the
2 report?

3 A. Not really. I don't know exactly what you're trying to
4 assess.

5 Q. We haven't received a report from you, I don't believe.

6 A. No, I did not provide a report.

7 Q. You weren't taking notes.

8 A. No.

9 Q. All right. You weren't recording the interview?

10 A. No.

11 Q. The only people present in the room when you spoke to my
12 client was your fellow agent and my client.

13 A. Agent Kepf was there. Myself, Mr. Connors was there. And
14 for a period of time, Devin, I don't know his last name, a
15 Region II officer, had been in the room.

16 Q. When did he come in the room?

17 A. After Miranda had been read, provided basic information. I
18 believe, I would say maybe 15 minutes or so into the interview.
19 10, 15 minutes.

20 Q. From the time you recall my client signing the Miranda
21 until his interview was concluded with the final admissions or
22 statements that you believe he made, how much time passed?

23 A. I would have to review notes. I don't know.

24 Q. Did you make an entry anywhere what time you went into the
25 station house?

1 A. The Miranda has 11:34, so that's what time that it was
2 witnessed. That he was read his Miranda rights. I don't know
3 what time it concluded.

4 Q. Was there any discussion prior to him signing the Miranda
5 of anything involved in this case that you can recall?

6 A. I don't know.

7 Q. Did Mr. Connors ask any questions about his rights?

8 A. I don't recall.

9 Q. Did Mr. Connors independently, silently, with no one else
10 talking, read the rights? By the rights, I mean the card.

11 A. Right. In all honesty, I don't recall.

12 Q. Do you remember if you read his rights to him at any time?

13 A. I believe it was Agent Kepf.

14 Q. Do you recall if she read the rights one time or more than
15 one time?

16 A. I believe it was once, but that's my recollection.

17 Q. And after she -- did she read the rights from a card to him
18 or from memory, or did she read the rights from a copy of a
19 sheet of paper that he eventually signed and now it's been
20 admitted as an exhibit?

21 A. It would be from this form.

22 Q. Was it the form, regular eight-and-a-half by 11?

23 A. Just like this.

24 Q. Just like that. Not on a card?

25 A. Well, it is from a card. It is a copy of a card.

1 Q. Okay. So there was a small copy on the page. I'm going to
2 ask you to please keep eye contact with me because I still feel
3 you're looking over to the agent.

4 A. No, I'm looking at the -- what you're asking about.

5 Q. Thank you. And normally -- let's just say more commonly,
6 you would have a full page of Miranda rights rather than that
7 small copy, wouldn't you?

8 A. If it is available, yes.

9 Q. But it wasn't available in this instance?

10 A. We made do with what we had, and he was advised of his
11 rights.

12 Q. How long did that gentleman stay in the room with you when
13 the interview was going on?

14 A. He was there for, I would say, approximately half of the
15 interview. I don't know exactly how long the interview lasted.

16 Q. Do you know if he was taking notes?

17 A. No.

18 Q. Was he asking questions?

19 A. Yes.

20 Q. Where was he seated?

21 A. He was standing for a period of time. I don't know if he
22 sat down ever.

23 Q. Where was he standing relative to my client?

24 A. If the AUSA is your client and I am -- I would probably be,
25 I don't know, another -- I don't know how you want me to

1 describe this. Do you want me to stand up and get closer?

2 Q. Just so Judge Garza can understand your description and
3 show relative distance.

4 A. Okay. Approximately -- I was sitting approximately four
5 feet from the defendant, as was Agent Kepf. Devin, when he
6 came in, was standing against the wall, so he was maybe five
7 feet from the defendant.

8 Q. All right. The room is how big? Does an eight-by-12-feet
9 room, is that about the size of the room?

10 A. Sure. I don't...it was probably -- yeah, I guess somewhat
11 near that. I'm sorry, I didn't measure the room prior to
12 actually doing the interview.

13 Q. Pretty small room, can we agree on that?

14 A. It wasn't huge, no.

15 Q. Plastic chairs or wood or metal chairs?

16 MR. CAIRNS: I think we're getting pretty far afield
17 here. I know the Rules of Evidence don't apply, but plastic or
18 metal chairs?

19 THE COURT: I don't know the relevance.

20 But please answer, and let's move on.

21 A. I don't recall the type of chairs.

22 Q. (By Mr. Samore) How big was the table?

23 A. Four by two, maybe. I don't -- I didn't measure -- take
24 out a ruler and measure the room or the space.

25 Q. Pretty small table?

1 A. It's not a huge table, no.

2 Q. Have you been in that room before?

3 A. No.

4 Q. Or since?

5 A. No.

6 Q. Okay. Do you remember taking a picture of a phone and
7 sending a text message to someone's phone, one of these two
8 suspect's phone, and sending a message to the dealer?

9 A. Mr. Connors typed in a message, and I took a picture of his
10 phone, yes, with a message on it.

11 Q. All right.

12 MR. SAMORE: Thank you, no further questions.

13 THE COURT: Mr. Robert?

14 MR. ROBERT: No questions, Your Honor.

15 THE COURT: All right. Redirect.

16 MR. CAIRNS: No redirect.

17 THE COURT: May this agent be permanently excused?

18 MR. CAIRNS: Yes, Your Honor.

19 THE COURT: Please step down. I understand the
20 government has one additional witness. I'm going to take a
21 very brief recess, maybe five to seven minutes.

22 Counsel, I would like for you to confer to your clients
23 to determine if they are going to testify at the conclusion of
24 this hearing. I'm not going to take another break to do that.
25 Then we will discuss your motion to provide additional

1 information. All right?

2 (Court recessed at 12:49 p.m. to 12:55 p.m.)

3 THE COURT: Court's back in session.

4 Please call your next witness.

5 MR. CAIRNS: Government calls Homeland Security Special
6 Agent John Dennis.

7 THE COURT: Please come forward and please raise your
8 right hand.

9 **JOHN DENNIS,**

10 after having been duly sworn, testified as follows:

11 **DIRECT EXAMINATION**

12 **BY MR. CAIRNS:**

13 Q. Good morning. Please state your name for the record.

14 A. Special Agent John Dennis, Homeland Security
15 Investigations.

16 Q. How long have you been with HSI?

17 A. Two-and-a-half years, sir.

18 Q. Did you participate on December 12, 2012, in the interview
19 of Mr. Jones?

20 A. Yes, sir.

21 Q. Prior to the interview of Mr. Jones, did you or another
22 agent read Mr. Jones his Miranda rights?

23 A. Yes, sir.

24 Q. Was he also provided with a written copy of the Miranda
25 warning?

1 A. Yes, sir.

2 Q. If I might approach, I'm handing you what's been marked as
3 Government's Exhibit Number 4. Can you tell me what that is?

4 A. Yes, sir. It's a copy of the Miranda card I carry with my
5 credentials, and it is the signature of Mr. Jones.

6 MR. CAIRNS: I move for the admission of Government's
7 Exhibit Number 4.

8 THE COURT: Any objection, Counsel?

9 MR. ROBERT: No, objection.

10 THE COURT: Number 4 will be admitted.

11 (Government's Exhibit 4 admitted.)

12 Q. (By Mr. Cairns) Was this warning provided to him before he
13 answered any questions?

14 A. Yes, sir.

15 Q. And did he -- let me strike that. Did he agree to -- after
16 being read these rights, did he agree to answer questions?

17 A. Yes, sir, he was provided the opportunity -- I verbally
18 read the rights to him, and then I had him read the card and
19 then sign the form.

20 Q. Is that his signature on there as well?

21 A. Yes, sir.

22 MR. CAIRNS: That's all the questions I have.

23 THE COURT: All right.

24

25

1 **CROSS EXAMINATION**

2 **BY MR. ROBERT:**

3 Q. There were several people, investigating agents, in the
4 room during the time that you questioned Mr. Jones, right?

5 A. No, sir. It was myself, a lieutenant from Region II Task
6 Force, and one other deputy from the Region II Task Force, so
7 it was three of us total.

8 Q. Was there a masked individual in the room?

9 A. Not that I was aware.

10 Q. Wouldn't you be aware of a masked individual in a small
11 room?

12 A. It wasn't a small room, sir; it was a conference room with
13 multiple tables, like a briefing-type room.

14 Q. Let me change the question. If there were somebody wearing
15 a balaclava or some kind of mask, you would have noticed,
16 wouldn't you?

17 A. I was facing Mr. Jones with my back to the majority of the
18 room. So he could have come in or left, but I don't remember,
19 to the best of my memory, seeing an individual in a balaclava.

20 Q. Do you remember Agent Kepf being in the room?

21 A. Not at the time during my questioning.

22 Q. I'm not sure why you're limiting your answer that way. Was
23 there ever a time during the time that Mr. Jones was in the
24 room that Agent Kepf was in the room, too?

25 A. I do not remember her staying in the room. I know people

1 are coming in and out of the room throughout the questioning,
2 but I do not remember her staying in the room.

3 Q. Staying in the room implies being in the room at some point
4 and then not being there for very long. Is that what you're
5 telling us?

6 A. No, sir, I do not remember who exactly came through the
7 room.

8 Q. Did you make any kind of report regarding your questioning
9 of Mr. Jones?

10 A. Yes, sir, I did.

11 Q. Do you have it with you?

12 A. I do not have a copy personally with me.

13 Q. Okay. To whom did you provide this report that you
14 prepared?

15 A. I provided it to the case agent, sir.

16 Q. That would be Agent Kepf who is sitting here, right?

17 A. Yes, sir.

18 MR. ROBERT: May I approach?

19 THE COURT: You may.

20 Q. (By Mr. Robert) Is this your report?

21 A. It appears to be a copy of the report, sir.

22 Q. Is there anything else in writing that you prepared or are
23 aware of relating to your interview of Mr. Jones?

24 A. No, sir.

25 Q. In the report, it says that there were John, J. D. Dennis,

1 and representatives from Region II Narcotics Task Force
2 interviewed Thomas Jones.

3 A. Yes, sir.

4 Q. But you don't recall who those representatives might have
5 been?

6 A. I know one of them for sure was a Lieutenant Haws from
7 Region II Task Force.

8 Q. How long did it take to conduct the interrogation?

9 A. It was not an interrogation, sir; it was just an interview.

10 Q. Okay. Whatever you want to call it, how long did it take?

11 A. I'm not sure on the exact time without referring back to my
12 report; but the best of my memory, I think it probably took no
13 longer than 45 minutes max.

14 Q. If the report says 2330 begin, 0050, which is 10 until
15 1:00, end, that's about an hour 20 minutes by my calculations.
16 Does that sound about right to you?

17 A. Yes, sir.

18 MR. ROBERT: A moment, Your Honor?

19 THE COURT: Certainly.

20 MR. ROBERT: That's all, thank you.

21 THE COURT: Mr. Samore, do you have any questions?

22 MR. SAMORE: No, Judge.

23 THE COURT: Do you have any redirect?

24 MR. CAIRNS: No, Your Honor.

25 THE COURT: May this agent be permanently excused?

1 MR. CAIRNS: Yes, Your Honor.

2 THE COURT: Does the government have any other
3 witnesses?

4 MR. CAIRNS: No, Your Honor.

5 THE COURT: All right. Mr. Samore, does your client
6 wish to testify?

7 MR. SAMORE: I believe we're going to put Mr. Connors
8 on for a very narrow issue, and I would just like to talk to
9 him for maybe one minute. I can do it in court. He just got
10 back to the court right before we went back in session.

11 THE COURT: Go ahead and talk to him.

12 Mr. Robert?

13 MR. ROBERT: Mr. Jones will not testify.

14 THE COURT: Thank you.

15 MR. SAMORE: Judge, we would call Terrence Connors.

16 THE COURT: All right, Mr. Connors, please come
17 forward. Can we remove his right handcuff so he can be sworn?

18 DEPUTY MARSHAL: Yes, Your Honor.

19 THE COURT: All right, that's fine, sir. Go ahead.

20 **TERRENCE CONNORS,**

21 after having been duly sworn, testified as follows:

22 THE COURT: And you are giving this testimony after
23 conferring with your attorney?

24 THE WITNESS: Yes, Your Honor.

25 THE COURT: Go ahead and have a seat.

1 DIRECT EXAMINATION

2 BY MR. SAMORE:

3 Q. Mr. Connors, what is your height and weight as best you
4 know today?

5 A. 199, and I'm five-foot ten.

6 Q. What was your height and weight back in December of 2012?

7 A. I think I was at 165 and five-foot ten.

8 Q. I'm going to turn your attention to the testimony of
9 Officer Chris Martin that you heard today. Did you hear that
10 testimony?

11 A. Yes, sir.

12 Q. Do you recall meeting with Officer Martin in Albuquerque
13 the early morning of December 18, 2012?

14 A. Yes.

15 Q. Do you remember at what time of day you had that meeting?

16 A. It was early in the morning, six-ish, something like that.

17 Q. Was anyone else present at that meeting?

18 A. I think it was just him and I. Maybe Abbey.

19 THE WITNESS: I can't remember your last name, I'm
20 sorry.

21 Q. (By Mr. Samore) Do you remember the agent being --
22 Agent Kepf being present, or are you going just on her
23 testimony?

24 A. I'm just -- I know the man was there because I talked to
25 him.

1 Q. The only area I'm going to ask you a question is regarding
2 your recollection of what occurred prior to your signing that
3 consent to search. Did you sometime that morning sign a
4 consent to search?

5 A. Yes, sir.

6 Q. What property was being searched?

7 A. My apartment.

8 Q. And where was your apartment?

9 A. 1517-1/2 Gold Avenue.

10 Q. Did you have any conversation prior to signing that consent
11 with Officer Martin regarding the situation with your dogs?

12 A. Yes, sir, I was concerned about his health.

13 Q. Tell the court what you told Officer Kepf about your dogs
14 and how you recall the conversation occurring.

15 MR. CAIRNS: Your Honor, I'm going to object that
16 that's mischaracterizing his earlier testimony. He doesn't
17 remember whether Agent Kepf was present.

18 MR. SAMORE: If I said "Agent Kepf," I misspoke. I
19 meant Officer Martin.

20 THE COURT: Thank you for clarifying the record.

21 Q. (By Mr. Samore) Just on that area, just tell the court
22 what you recall about the conversation solely about your dog,
23 the apartment, and the signing of the consent.

24 A. I was concerned about my dog's welfare. He's the only
25 thing I have. I don't have a wife or anything. So I've grown

1 real attached to him, and I was just afraid that if I had
2 gotten arrested and hauled off, he would be in there by himself
3 and nobody to feed him, and I was basically willing to do
4 anything to get to see him. So the officer said that if I
5 signed the paper, he'll let me go into my apartment, that I
6 would be able to take care of my dog and see him. And
7 actually, I agreed to it.

8 MR. SAMORE: No further questions, pass for cross.

9 THE COURT: Mr. Robert, do you have any questions you
10 want to ask?

11 MR. ROBERT: I do not, Your Honor, thank you.

12 **CROSS EXAMINATION**

13 **BY MR. CAIRNS:**

14 Q. Mr. Connors, did the agents tell you at the time that you
15 gave consent that they were writing a search warrant for your
16 apartment?

17 A. No, sir.

18 Q. And so then you said you expressed concern for your dog and
19 you wanted to care for the animal. Didn't the agents try to
20 help you provide for the dog while they were searching the
21 apartment?

22 A. Whenever I got there, they let me hold him and to make sure
23 he didn't bite at any of them, and then they had me put him in
24 the bathroom. But they did let me make a phone call, and to
25 let somebody come -- I didn't know what I could tell the person

1 that I called, so I just told them I was going to the hospital,
2 that I was leaving my dog alone. I didn't really know what I
3 was supposed to say to him except to come get my dog.

4 MR. CAIRNS: That's all, Your Honor.

5 THE COURT: All right. Redirect?

6 MR. SAMORE: No redirect, Judge.

7 THE COURT: All right, Mr. Connors, thank you very
8 much, sir, you can step down and join your attorney.

9 All right. Mr. Robert, I think the only issue
10 remaining is what other information you are asking this court
11 to disclose regarding the confidential informant.

12 MR. ROBERT: Well, Your Honor, it boils down to our
13 ability to effectively inquire as to things that are critical
14 to a determination of the validity in this case of an arrest
15 warrant that led to this whole thing.

16 THE COURT: Okay.

17 MR. ROBERT: Our position is, and I made a written
18 request to the government for a lot of information, including
19 specific information about the confidential informant, and of
20 course, filed a motion when that information wasn't
21 forthcoming, and that motion is what's pending. And, of
22 course, Mr. Cairns, after consulting with the other folks
23 involved in the case, decided to release the name of the
24 person, and so we have that, and we can conduct some additional
25 investigation, which is really kind of what we want to do.

1 But there are parts of the investigation that we can't
2 get, and one of them came to the fore today in conversations.
3 We now know that there was a contract and a list of things to
4 do and not to do that this guy was advised of and signed.
5 During his apparently short life as a credible, reliable
6 confidential informant for Region II. Clearly, he wasn't
7 credible and reliable, and I think to the extent that that has
8 any impact on our ability to talk to the court about whether or
9 not the information that was obtained from this person,
10 including the controlled buy, was reliable and trustworthy and
11 a valid foundation for the warrant that led to all this, I
12 think we're entitled to know these things about this person.

13 In particular, what we learned today, and we didn't
14 know it before today, was that there wasn't anything before
15 this event that gave rise to any conclusion by law enforcement
16 that this was a credible, reliable person. All they knew about
17 him, according to the agent who testified about him, was, well,
18 he was on the street, he was a drug user and maybe a drug
19 dealer. That's all we knew. That's not a glowing
20 recommendation.

21 Now we know, of course, that he's been terminated for
22 not completing his contract, was the phrase, I believe that was
23 used, and I think what that means is he messed up. You know,
24 he committed an additional sin in addition to all the other
25 sins we had from this guy. And I think, again, to the extent

1 that we are entitled and required to advise the court about
2 whether or not this guy was reliable and the proper foundation
3 for a warrant, we need to know these things.

4 So I would respectfully ask -- the guy is not a CI
5 anymore, so -- and I am certainly not planning on going out and
6 publishing his name and picture, but we need to do our
7 investigation, and that's really what that motion and our
8 continued pursuit of the motion is about.

9 THE COURT: Okay. But I need to know specifically what
10 you're requesting now. Sounds like you're requesting the
11 contract and the reason he's terminated from the program. Is
12 that right?

13 MR. ROBERT: Yes.

14 THE COURT: And what else?

15 MR. ROBERT: Well, I think a lot of the other
16 information was about things that may have -- for example,
17 payment records. There aren't any payment records; he wasn't
18 paid. The only consideration he got was apparently some
19 consideration that's no longer on the table for a case that was
20 currently pending at the time.

21 I can't think of anything else at this time, because
22 there doesn't seem to be anything else. I mean, I guess, to
23 the extent that some of the reasons that he was terminated had
24 to do with other investigations, I want to know about that; but
25 I'm obviously willing to accept that information in redacted

1 form so that no other either previously concluded or ongoing
2 investigations are compromised.

3 THE COURT: Let me hear from you, Mr. Cairns.

4 MR. CAIRNS: Your Honor, again, if you read through my
5 response to Mr. Robert's motion, and if you read from the Cruz
6 decision from the Tenth Circuit which is cited in there, I
7 really have no obligation to disclose the confidential
8 informant's identity because the narcotics that were involved
9 in the controlled buy did not result in the charge against this
10 defendant. But we released his identity as a courtesy to the
11 defendants.

12 Also because, frankly -- and I will confess that his
13 criminal record is terrible. I think in some ways, he was too
14 dirty to even be a CI, and so we did release his identity. But
15 the other material Mr. Robert wants, I mean, we'll stipulate
16 that he's completely unreliable. The agents didn't believe
17 anything that he said absent some corroboration of that.

18 I'll stipulate that he has a criminal record a mile
19 long, and that he's not an individual that is deserving of any
20 kind of trust. But again, at each --

21 THE COURT: That's quite a stipulation, Counsel.

22 MR. CAIRNS: At each juncture, the information that he
23 provided to the officers was corroborated.

24 Moreover, that arrest warrant was based on the observed
25 controlled buy that took place with Mr. Connors. It was

1 tape-recorded. The transaction was tape-recorded. There was
2 surveillance, constant surveillance. The CI was thoroughly
3 searched prior to that. After the transaction with
4 Mr. Connors, he had the narcotics on him. That alone would
5 have given -- would have been more than sufficient to have an
6 arrest warrant issued.

7 So again, most of the stuff -- other than the contract,
8 his contract, and again, I allowed -- I did not make a lot of
9 objections when Mr. Robert was asking -- when either Mr. Samore
10 or Mr. Robert were asking about the agreement with the
11 confidential informant. I let them go into that, into what
12 that agreement actually says. You know, as to why he was
13 terminated from the program, I just don't think that that's
14 relevant in the context of Mr. Robert's case. I don't think it
15 is going to help him prepare his defense in this case.

16 So I would submit that, given that we've turned over
17 pretty much everything either through discovery or actually
18 here today on the witness stand, that motion be denied.

19 THE COURT: Thank you.

20 MR. SAMORE: Judge, all we would say from our
21 standpoint --

22 THE COURT: You've withdrawn your motion, Counsel.

23 MR. SAMORE: Don't I get to be heard on the
24 stipulation? I was going to say I accept the stipulation.

25 THE COURT: Mr. Robert? Do you accept the stipulation

1 that this informant is unreliable, he has a criminal record a
2 mile long, and he's not deserving of trust?

3 MR. ROBERT: I believe completely unreliable was the
4 phrase that was used, and I accept that stipulation.

5 THE COURT: Sorry. Completely unreliable, criminal
6 record a mile long, not deserving of trust. So you accept that
7 in lieu of the contract and the reason he was terminated from
8 the program?

9 MR. ROBERT: Yes.

10 THE COURT: All right. Does defense have any other
11 witnesses?

12 MR. ROBERT: Not for Mr. Jones.

13 THE COURT: Any other evidence that needs to be
14 presented, any arguments, Counsel?

15 Again, what I propose to do is ask Mr. De La Rosa when
16 the transcript might be ready, ask you to submit proposed
17 findings and conclusions in this case, and we'll make rulings.

18 MR. ROBERT: Your Honor, I would propose doing that in
19 lieu of an argument at this point.

20 MR. CAIRNS: Yes, Your Honor.

21 THE COURT: Mr. Samore?

22 MR. SAMORE: Agreed, Judge.

23 THE COURT: Then let's look at time. Let me ask
24 Mr. De La Rosa, what's a reasonable time that this transcript
25 could be ready?

1 Assuming the transcript is ready on the 23rd, knowing
2 your respective schedules -- I know, Mr. Cairns, you have a
3 trial.

4 I think Mr. Samore is unavailable for a period of time.
5 Is that right? From when, the 9th through when that you are
6 going to be unavailable?

7 MR. SAMORE: You're on top of the file, Judge. That's
8 correct.

9 THE COURT: Before the transcript is available anyway.

10 MR. CAIRNS: My trial that was scheduled to begin on
11 September 3rd has been moved to the 23rd; however, I can still
12 finish my findings and conclusions within two weeks of that
13 date.

14 THE COURT: Okay. So that would be October 7th. Is
15 that correct?

16 MR. CAIRNS: Yes, Your Honor.

17 THE COURT: Counsel, is that a reasonable time for your
18 findings and conclusions after you receive the transcript?

19 MR. ROBERT: On behalf of Mr. Jones, yes, Your Honor.

20 THE COURT: October 7th, counsel. The transcript will
21 be ready on the 23rd. Findings and conclusions on October 7th.

22 MR. SAMORE: Judge, that is workable. Because I have a
23 major trial the first week and second week in October, and I'm
24 just coming back, I'm concerned about maybe needing another
25 week, but Judge Armijo has me meeting deadlines the following

1 week, so I'll get something out pretty quickly on this.

2 THE COURT: If you can't for some reason meet the 7th
3 deadline, speak to Mr. Cairns.

4 MR. SAMORE: We have a great relationship.

5 THE COURT: I know you do, and I really appreciate
6 that. It's nice to have a hearing like this.

7 MR. CAIRNS: We've had a lot of cases together.

8 THE COURT: I know you have.

9 MR. SAMORE: If Mr. De La Rosa needs more time, it
10 won't break our heart.

11 THE COURT: Okay. So we'll say the 7th, unless you ask
12 for a continuance. I've spent most of my career doing this
13 kind of work, and I so appreciate the professional relationship
14 between the parties, and the respect, because I don't see it in
15 some of the other cases that we have. I'm just so used to it.
16 But I appreciate it.

17 Thank you all. Anything else?

18 MR. CAIRNS: No, Your Honor. Not on behalf of the
19 government.

20 THE COURT: All right. Court is in recess, then.

21 (Court recessed at 1:20 p.m.)

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C-E-R-T-I-F-I-C-A-T-E

UNITED STATES OF AMERICA
DISTRICT OF NEW MEXICO

I, John De La Rosa, RPR, CCR, Official Court Reporter for
the State of New Mexico, do hereby certify that the foregoing
pages constitute a true transcript of proceedings had before
the said Court held in the City of Albuquerque, New Mexico, in
the matter therein stated.

In testimony whereof, I have hereunto set my hand on this
10th day of September, 2013.

JOHN DE LA ROSA, CCR
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	I N D E X	PAGE
1		
2	DEVIN VERHULST	
	Direct Examination by Mr. Cairns	4
3	Cross Examination by Mr. Samore	22
	Cross Examination by Mr. Robert	43
4	Redirect Examination by Mr. Cairns	58
	CHRIS MARTIN	
5	Direct Examination by Mr. Cairns	60
	Cross Examination by Mr. Robert	73
6	Cross Examination by Mr. Samore	74
	Redirect Examination by Mr. Cairns	84
7	ABBEY KEPF	
	Direct Examination by Mr. Cairns	86
8	Cross Examination by Mr. Samore	95
	Cross Examination by Mr. Robert	115
9	Cross Examination (Cont'd) by Mr. Samore	118
	Redirect Examination by Mr. Cairns	118
10	CHRISTINE BRITAL	
	Direct Examination by Mr. Cairns	119
11	Cross Examination by Mr. Samore	120
	JOHN DENNIS	
12	Direct Examination by Mr. Cairns	126
	Cross Examination by Mr. Robert	128
13	TERRENCE CONNORS	
	Direct Examination by Mr. Samore	132
14	Cross Examination by Mr. Cairns	134
	REPORTER'S CERTIFICATE	
15	GOVERNMENT'S EXHIBITS	ADMITTED
	1 Photo of glass pipe	67
16	2 Photocopy of Connors' Miranda warning	94
	3 Consent to Search Form	70
17	4 Photocopy of Jones' Miranda warning	127
	5 CD of audio recordings	11
18	6 Photo of Connors with his dog Gateway	73
19		
20		
21		
22		
23		
24		
25		